

against or in favor of the state bank, a proceeding to which the state bank is a party, or the existing rights of persons other than shareholders of the state bank. An amendment changing the state bank's name does not abate a proceeding brought by or against the state bank in its former name.

Sec. 134. Section 524.1806, Code 1995, is amended to read as follows:

524.1806 BANKS OWNED OR CONTROLLED – OFFICERS AND DIRECTORS.

~~If any An individual who is a director or an officer, or both, of a bank holding company, or of a bank which is owned or controlled by a bank holding company in any manner, and to the extent, as specified by section 524.1801, such individual shall also be is~~ deemed to be a director or an officer, or both, as the case may be, of each bank so owned or controlled by that bank holding company, for the purposes of sections 524.612, 524.613 and 524.706.

Sec. 135. Sections 524.106, 524.402, 524.403, 524.518, 524.704, 524.1307, 524.1308, 524.1407, 524.1507, 524.1701, 524.1702, and 524.1703, Code 1995, are repealed.

Approved May 3, 1995

## CHAPTER 149

### REGULATION OF CEMETERIES AND FUNERAL AND CEMETERY MERCHANDISE AND SERVICES

H.F. 486

†AN ACT relating to the regulation of cemetery operators and the regulation of perpetual care cemeteries and nonperpetual care cemeteries, establishing requirements related to the sale of preneed funeral contracts and the sale of funeral and cemetery merchandise, establishing fees and use of those fees, and providing penalties.

*Be It Enacted by the General Assembly of the State of Iowa:*

Section 1. Section 523A.1, unnumbered paragraphs 1 and 4, Code 1995, are amended to read as follows:

1. Whenever an agreement is made by any person, firm, or corporation to furnish, upon the future death of a person named or implied in the agreement, funeral services or funeral merchandise, a minimum of eighty percent of all payments made under the agreement shall be and remain trust funds until occurrence of the death of the person for whose benefit the funds were paid, unless the funds are sooner released to the person making the payment by mutual consent of the parties. Payments otherwise subject to this section are not exempt merely because they are held in certificates of deposit. The commissioner may adopt rules to prohibit the commingling of trust funds with other funds of the seller.

This section does not apply to payments for merchandise delivered to the purchaser. Delivery Except for caskets and other types of inner burial containers or concrete burial vaults sold after July 1, 1995, delivery includes storage in a warehouse under the control of the seller or any other warehouse or storage facility approved by the commissioner when a receipt of ownership in the name of the purchaser is delivered to the purchaser, the merchandise is insured against loss, the merchandise is protected against damage, title has been transferred to the purchaser, the merchandise is appropriately identified and described in a manner that it can be distinguished from other similar items of merchandise, the method of storage allows for visual audits of the merchandise, and the annual reporting requirements of section 523A.2, subsection 1, are satisfied.

Sec. 2. Section 523A.1, Code 1995, is amended by adding the following new subsection:

**NEW SUBSECTION.** 2. An agreement may be funded by insurance proceeds derived from a policy issued by an insurance company authorized to conduct business in this state. Such funding may be in lieu of a trust fund if the payments are made directly to the insurance company by the purchaser of the agreement.

Sec. 3. Section 523A.2, subsection 1, paragraphs a and c, Code 1995, are amended to read as follows:

a. All funds held in trust under section 523A.1 shall be deposited in a state or federally insured bank, savings and loan association, or credit union authorized to conduct business in this state, or trust department thereof of such bank, savings and loan association, or credit union, or in a trust company authorized to conduct business in this state, within fifteen days after the close of the month of receipt of the funds and shall be held as provided in paragraph "g" for the designated beneficiary until released pursuant to section 523A.1.

c. The seller under an agreement referred to in section 523A.1 shall file with the commissioner not later than March 1 of each year a report including the following information:

(1) The name and address of the seller and the name and address of the establishment that will provide the funeral services or funeral merchandise.

(2) ~~The name of the purchaser, beneficiary, and the amount of each agreement under section 523A.1 made in the preceding year and the date on which it was made. The balance of each trust account as of the end of the preceding calendar year, identified by the name of the purchaser or the beneficiary, and a report of any amounts withdrawn from trust and the reason for each withdrawal.~~

(3) ~~The total value of agreements subject to section 523A.1 entered into, the total amount paid pursuant to those agreements, and the total amount deposited in trust as required under section 523A.1, during the preceding year. A description of insurance funding outstanding at the end of the preceding calendar year, identified by the name of the purchaser or the beneficiary, and a report of any insurance payments received by the seller.~~

(4) ~~The amount of any payments received pursuant to agreements reported in previous years in accordance with subparagraphs (2) and (3) and the amount of those payments deposited in trust for each purchaser.~~

(5) ~~The change in status of any trust account, including total amount of interest or income withdrawn from each trust account in the preceding year, and for each purchaser, any other amounts withdrawn from trust and the reason for each withdrawal. However, regular increments of interest or income need not be reported on a yearly basis.~~

(6) ~~The name and address of the financial institution in which trust funds were deposited, and the name and address of each insurance company which funds agreements under section 523A.1.~~

(7) ~~The name and address of each purchaser of funeral merchandise delivered in lieu of trusting pursuant to section 523A.1, and a description of that merchandise for each purchaser.~~

(8) (4) ~~The A complete inventory of funeral merchandise and its location in the seller's possession that has been delivered in lieu of trusting pursuant to section 523A.1.~~

(9) ~~Other information reasonably required by the commissioner for purposes of administration of this chapter.~~

The information required by subparagraphs (7) and (8) shall include, including the location of the merchandise, serial numbers or warehouse receipt numbers, identified by the name of the purchaser or the beneficiary, and a verified statement of a certified public accountant that the certified public accountant has conducted a physical inventory of the funeral merchandise specified in subparagraph (8) and that each item of that merchandise is in the seller's possession at the specified location. The statement shall be on a form prescribed by the commissioner.

(5) The name of the purchaser, beneficiary, and the amount of each agreement re-

ferred to in section 523A.1 made in the preceding year and the date on which it was made.

(6) Other information reasonably required by the commissioner for purposes of administration of this chapter.

The report shall be accompanied by a filing fee determined by the commissioner which shall be sufficient to defray the costs of administering this chapter.

Sec. 4. Section 523A.2, subsection 7, Code 1995, is amended to read as follows:

7. This chapter does not prohibit the funding of an agreement ~~otherwise subject to section 523A.1~~ by insurance proceeds derived from a policy issued by an insurance company authorized to conduct business in this state. The seller of an agreement subject to this chapter which is to be funded by insurance proceeds shall obtain all permits required to be obtained under this chapter and comply with the reporting requirements of this section.

Sec. 5. Section 523A.8, subsection 1, paragraphs e, h, and j, Code 1995, are amended to read as follows:

e. State clearly whether the agreement is a guaranteed price contract or a nonguaranteed price contract. Each nonguaranteed price contract shall contain in twelve point bold type, an explanation of the consequences in substantially the following language:

THE PRICES OF MERCHANDISE AND SERVICES UNDER THIS AGREEMENT ARE SUBJECT TO CHANGE IN THE FUTURE. ANY FUNDS PAID UNDER THIS CONTRACT ARE ONLY A DEPOSIT TO BE APPLIED, TOGETHER WITH ACCRUED INCOME, TOWARD THE FINAL COSTS OF THE MERCHANDISE OR SERVICES CONTRACTED FOR. ADDITIONAL CHARGES MAY BE REQUIRED.

h. Explain the disposition of the ~~interest and disclose what fees and expenses may be charged if incurred~~ income generated from investments, include a statement of fees, expenses, and taxes which may be deducted, and include a statement of the buyer's responsibility for income taxes owed on the income, if applicable.

j. ~~State the name and address of the commissioner. Include an explanation of regulatory oversight by the insurance division in twelve point bold type, in substantially the following language:~~

THIS CONTRACT MUST BE REPORTED TO THE IOWA INSURANCE DIVISION BY THE FIRST DAY OF MARCH OF THE FOLLOWING YEAR. YOU MAY CALL THE INSURANCE DIVISION AT (INSERT TELEPHONE NUMBER) TO CONFIRM THAT YOUR CONTRACT HAS BEEN REPORTED. WRITTEN INQUIRIES OR COMPLAINTS SHOULD BE MAILED TO THE FOLLOWING ADDRESS: IOWA SECURITIES BUREAU, (INSERT ADDRESS).

Sec. 6. Section 523A.8, Code 1995, is amended by adding the following new subsection:

**NEW SUBSECTION.** 1A. The commissioner may adopt rules establishing disclosure and format requirements to promote consumers' understanding of the merchandise and services purchased and the available funding mechanisms under an agreement pursuant to this chapter.

Sec. 7. Section 523A.8, Code 1995, is amended by adding the following new subsection:

**NEW SUBSECTION.** 3. The seller shall disclose at the time an application is made by an individual and prior to accepting the applicant's initial premium or deposit for a preneed funeral contract or prearrangement subject to section 523A.1 which is funded by a life insurance policy, the following information:

- a. That a life insurance policy is involved or being used to fund an agreement.
- b. The nature of the relationship among the soliciting agent or agents, the provider of the funeral or cemetery merchandise or services, the administrator, and any other person.
- c. The relationship of the life insurance policy to the funding of the prearrangement

and the nature and existence of any guarantees relating to the prearrangement.

d. The impact on the prearrangement of the following:

(1) Changes in the life insurance policy including, but not limited to, changes in the assignment, beneficiary designation, or use of proceeds.

(2) Any penalties to be incurred by the policyholder as a result of the failure to make premium payments.

(3) Penalties to be incurred or cash to be received as a result of the cancellation or surrender of the life insurance policy.

e. A list of merchandise and services which are applied or contracted for in the prearrangement and all relevant information concerning the price of the funeral services, including an indication that the purchase price is either guaranteed at the time of purchase or to be determined at the time of need.

f. All relevant information concerning what occurs and whether any entitlements or obligations arise if there is a difference between the proceeds of the life insurance policy and the amount actually needed to fund the agreement.

g. Any penalties or restrictions, including but not limited to, geographic restrictions or the inability of the provider to perform, on the delivery of merchandise, services, or the prearrangement guarantee.

h. That a sales commission or other form of compensation is being paid and, if so, the identity of the individuals or entities to whom it is paid.

Sec. 8. Section 523A.20, Code 1995, is amended to read as follows:

**523A.20 INSURANCE DIVISION'S REGULATORY FUND.**

The insurance division may authorize the creation of a special revenue fund in the state treasury, to be known as the insurance division regulatory fund. ~~Commencing July 1, 1990, and annually thereafter, the~~ The commissioner shall allocate annually from the fees paid pursuant to section 523A.2, ~~one dollar~~ two dollars for each agreement reported on an establishment permit holder's annual report for deposit to the regulatory fund. The remainder of the fees collected pursuant to section 523A.2 shall be deposited into the general fund of the state. ~~However, if the balance of the regulatory fund on that July 1 exceeds two hundred thousand dollars, the allocation to the regulatory fund shall not be made and the total sum of the fees paid pursuant to section 523A.2 shall be deposited in the general fund of the state.~~ In addition, on May 1 of ~~1994~~ 1996 and ~~1995~~ 1997, the commissioner, to the extent necessary to fund consumer education, audits, investigations, payments under contract with licensed establishments to provide funeral merchandise or services in the event of statutory noncompliance by the initial seller, liquidations, and receiverships, shall assess establishment permit holders ~~five~~ two dollars for each agreement reported on the establishment permit holder's annual report of sales executed during the preceding year, which shall be deposited in the insurance division regulatory fund. The moneys in the regulatory fund shall be retained in the fund. The moneys are appropriated and, subject to authorization by the commissioner, may be used to pay auditors, audit expenses, investigative expenses, and the expenses of receiverships established pursuant to section 523A.19. An annual assessment shall not be imposed if the current balance of the fund exceeds two hundred thousand dollars.

Sec. 9. NEW SECTION. 523A.21 LICENSE REVOCATION - RECOMMENDATION BY COMMISSIONER TO BOARD OF MORTUARY SCIENCE EXAMINERS.

Upon a determination by the commissioner that grounds exist for an administrative license revocation or suspension action by the board of mortuary science examiners under chapter 156, the commissioner may forward to the board the grounds for the determination, including all evidence in the possession of the commissioner, so that the board may proceed with the matter as deemed appropriate.

Sec. 10. NEW SECTION. 523A.22 LIQUIDATION.

1. GROUND FOR LIQUIDATION. Upon receipt of a written request from the board

of mortuary science examiners, the commissioner may petition the district court for an order directing the commissioner to liquidate a funeral establishment on any of the following grounds:

a. The funeral establishment did not deposit funds pursuant to section 523A.1 or withdrew funds in a manner inconsistent with this chapter and is insolvent.

b. The funeral establishment did not deposit funds pursuant to section 523A.1 or withdrew funds in a manner inconsistent with this chapter and the condition of the funeral establishment is such that the further transaction of business would be hazardous, financially or otherwise, to its preneed funeral customers or the public.

## 2. LIQUIDATION ORDER.

a. An order to liquidate the business of a funeral establishment shall appoint the commissioner as liquidator and shall direct the liquidator to immediately take possession of the assets of the funeral establishment and to administer them under the general supervision of the court. The liquidator is vested with the title to the property, contracts, and rights of action and the books and records of the funeral establishment ordered liquidated, wherever located, as of the entry of the final order of liquidation. The filing or recording of the order with the clerk of court and the recorder of deeds of the county in which its principal office or place of business is located, or, in the case of real estate with the recorder of deeds of the county where the property is located, is notice as a deed, bill of sale, or other evidence of title duly filed or recorded with the recorder of deeds.

b. Upon issuance of an order, the rights and liabilities of a funeral establishment and of the funeral establishment's creditors, preneed and at-need funeral customers, owners, and other persons interested in the funeral establishment's estate shall become fixed as of the date of the entry of the order of liquidation, except as provided in subsection 14.

c. At the time of petitioning for an order of liquidation, or at any time after the time of petitioning, the commissioner, after making appropriate findings of a funeral establishment's insolvency, may petition the court for a declaration of insolvency. After providing notice and hearing as it deems proper, the court may make the declaration.

d. An order issued under this section shall require accounting to the court by the liquidator. Accountings, at a minimum, must include all funds received or disbursed by the liquidator during the current period. An accounting shall be filed within one year of the liquidation order and at such other times as the court may require.

e. Within five days after the initiation of an appeal of an order of liquidation, which order has not been stayed, the commissioner shall present for the court's approval a plan for the continued performance of the funeral establishment's obligations during the pendency of an appeal. The plan shall provide for the continued performance of preneed and at-need funeral contracts in the normal course of events, notwithstanding the grounds alleged in support of the order of liquidation including the ground of insolvency. If the defendant funeral establishment's financial condition, in the judgment of the commissioner, will not support the full performance of all obligations during the appeal pendency period, the plan may prefer the claims of certain at-need and preneed funeral customers and claimants over creditors and interested parties as well as other at-need and preneed funeral customers and claimants, as the commissioner finds to be fair and equitable considering the relative circumstances of such at-need and preneed funeral customers and claimants. The court shall examine the plan submitted by the commissioner and if it finds the plan to be in the best interests of the parties, the court shall approve the plan. An action shall not lie against the commissioner or any of the commissioner's deputies, agents, clerks, assistants, or attorneys by any party based on preference in an appeal pendency plan approved by the court.

## 3. POWERS OF LIQUIDATOR.

a. The liquidator may do any of the following:

(1) Appoint a special deputy to act for the liquidator under this chapter, and determine the special deputy's reasonable compensation. The special deputy shall have all the powers of the liquidator granted by this section. The special deputy shall serve at the pleasure of

the liquidator.

(2) Hire employees and agents, legal counsel, accountants, appraisers, consultants, and other personnel as the commissioner may deem necessary to assist in the liquidation.

(3) With the approval of the court fix reasonable compensation of employees and agents, legal counsel, accountants, appraisers, and consultants.

(4) Pay reasonable compensation to persons appointed and defray from the funds or assets of the funeral establishment all expenses of taking possession of, conserving, conducting, liquidating, disposing of, or otherwise dealing with the business and property of the funeral establishment. If the property of the funeral establishment does not contain sufficient cash or liquid assets to defray the costs incurred, the commissioner may advance the costs so incurred out of the insurance division regulatory fund. Amounts so advanced for expenses of administration shall be repaid to the insurance division regulatory fund for the use of the division out of the first available moneys of the funeral establishment.

(5) Hold hearings, subpoena witnesses, and compel their attendance, administer oaths, examine a person under oath, and compel a person to subscribe to the person's testimony after it has been correctly reduced to writing, and in connection to the proceedings require the production of books, papers, records, or other documents which the liquidator deems relevant to the inquiry.

(6) Collect debts and moneys due and claims belonging to the funeral establishment, wherever located. Pursuant to this subparagraph, the liquidator may do any of the following:

(a) Institute timely action in other jurisdictions to forestall garnishment and attachment proceedings against debts.

(b) Perform acts as are necessary or expedient to collect, conserve, or protect its assets or property, including the power to sell, compound, compromise, or assign debts for purposes of collection upon terms and conditions as the liquidator deems best.

(c) Pursue any creditor's remedies available to enforce claims.

(7) Conduct public and private sales of the property of the funeral establishment.

(8) Use assets of the funeral establishment under a liquidation order to transfer obligations of preneed funeral contracts to a solvent funeral establishment, if the transfer can be accomplished without prejudice to applicable priorities under subsection 18.

(9) Acquire, hypothecate, encumber, lease, improve, sell, transfer, abandon, or otherwise dispose of or deal with property of the funeral establishment at its market value or upon terms and conditions as are fair and reasonable. The liquidator shall also have power to execute, acknowledge, and deliver deeds, assignments, releases, and other instruments necessary to effectuate a sale of property or other transaction in connection with the liquidation.

(10) Borrow money on the security of the funeral establishment's assets or without security and execute and deliver documents necessary to that transaction for the purpose of facilitating the liquidation. Money borrowed pursuant to this subparagraph shall be repaid as an administrative expense and shall have priority over any other class 1 claims under the priority of distribution established in subsection 18.

(11) Enter into contracts as necessary to carry out the order to liquidate and affirm or disavow contracts to which the funeral establishment is a party.

(12) Continue to prosecute and to institute in the name of the funeral establishment or in the liquidator's own name any and all suits and other legal proceedings, in this state or elsewhere, and to abandon the prosecution of claims the liquidator deems unprofitable to pursue further.

(13) Prosecute an action on behalf of the creditors, at-need funeral customers, preneed funeral customers, or owners against an officer of the funeral establishment or any other person.

(14) Remove records and property of the funeral establishment to the offices of the

commissioner or to other places as may be convenient for the purposes of efficient and orderly execution of the liquidation.

(15) Deposit in one or more banks in this state sums as are required for meeting current administration expenses and distributions.

(16) Unless the court orders otherwise, invest funds not currently needed.

(17) File necessary documents for recording in the office of a recorder of deeds or record office in this state or elsewhere where property of the funeral establishment is located.

(18) Assert defenses available to the funeral establishment as against third persons including statutes of limitations, statutes of fraud, and the defense of usury. A waiver of a defense by the funeral establishment after a petition in liquidation has been filed shall not bind the liquidator.

(19) Exercise and enforce the rights, remedies, and powers of a creditor, at-need funeral customer, preneed funeral customer, or owner, including the power to avoid transfer or lien that may be given by the general law and that is not included within subsections 7 through 9.

(20) Intervene in a proceeding wherever instituted that might lead to the appointment of a receiver or trustee, and act as the receiver or trustee whenever the appointment is offered.

(21) Exercise powers now held or later conferred upon receivers by the laws of this state which are not inconsistent with this chapter.

b. This subsection does not limit the liquidator or exclude the liquidator from exercising a power not listed in paragraph "a" that may be necessary or appropriate to accomplish the purposes of this chapter.

#### 4. NOTICE TO CREDITORS AND OTHERS.

a. Unless the court otherwise directs, the liquidator shall give notice of the liquidation order as soon as possible by doing all of the following:

(1) By first class mail to all persons known or reasonably expected to have claims against the funeral establishment, including at-need and preneed funeral customers, by mailing a notice to their last known address as indicated by the records of the funeral establishment.

(2) By publication in a newspaper of general circulation in the county in which the funeral establishment has its principal place of business and in other locations as the liquidator deems appropriate.

b. Notice to potential claimants under paragraph "a" shall require claimants to file with the liquidator their claims together with proper proofs of the claim under subsection 13 on or before a date the liquidator shall specify in the notice. Claimants shall keep the liquidator informed of their changes of address, if any.

c. If notice is given pursuant to this section, the distribution of assets of the funeral establishment under this chapter shall be conclusive with respect to claimants, whether or not a claimant actually received notice.

#### 5. ACTIONS BY AND AGAINST LIQUIDATOR.

a. After the issuance of an order appointing a liquidator of a funeral establishment, an action at law or equity shall not be brought against the funeral establishment in this state or elsewhere, and existing actions shall not be maintained or further presented after issuance of the order. Whenever in the liquidator's judgment, protection of the estate of the funeral establishment necessitates intervention in an action against the funeral establishment that is pending outside this state, the liquidator may intervene in the action. The liquidator may defend, at the expense of the estate of the funeral establishment, an action in which the liquidator intervenes under this section.

b. Within two years or such additional time as applicable law may permit, the liquidator, after the issuance of an order for liquidation, may institute an action or proceeding on behalf of the estate of the funeral establishment upon any cause of action against which the period of limitation fixed by applicable law has not expired at the time of the filing of

the petition upon which the order is entered. If a period of limitation is fixed by agreement for instituting a suit or proceeding upon a claim, or for filing a claim, proof of claim, proof of loss, demand, notice, or the like, or if in a proceeding, judicial or otherwise, a period of limitation is fixed in the proceeding or pursuant to applicable law for taking an action, filing a claim or pleading, or doing an act, and if the period had not expired at the date of the filing of the petition, the liquidator may, for the benefit of the estate, take any action or do any act, required of or permitted to the funeral establishment, within a period of one hundred eighty days subsequent to the entry of an order for liquidation, or within a further period as is shown to the satisfaction of the court not to be unfairly prejudicial to the other party.

c. A statute of limitation or defense of laches shall not run with respect to an action against a funeral establishment between the filing of a petition for liquidation against the funeral establishment and the denial of the petition. An action against the funeral establishment that might have been commenced when the petition was filed may be commenced for at least sixty days after the petition is denied.

#### 6. COLLECTION AND LIST OF ASSETS.

a. As soon as practicable after the liquidation order but not later than one hundred twenty days after such order, the liquidator shall prepare in duplicate a list of the funeral establishment's assets. The list shall be amended or supplemented as the liquidator may determine. One copy shall be filed in the office of the clerk of court and one copy shall be retained for the liquidator's files. Amendments and supplements shall be similarly filed.

b. The liquidator shall reduce the assets to a degree of liquidity that is consistent with the effective execution of the liquidation.

c. A submission to the court for distribution of assets in accordance with subsection 11 fulfills the requirements of paragraph "a".

#### 7. FRAUDULENT TRANSFERS PRIOR TO PETITION.

a. A transfer made and an obligation incurred by a funeral establishment within one year prior to the filing of a successful petition for liquidation under this chapter is fraudulent as to then existing and future creditors if made or incurred without fair consideration, or with actual intent to hinder, delay, or defraud either existing or future creditors. A fraudulent transfer made or an obligation incurred by a funeral establishment ordered to be liquidated under this chapter may be avoided by the receiver, except as to a person who in good faith is a purchaser, lienor, or obligee for a present fair equivalent value. A purchaser, lienor, or obligee, who in good faith has given a consideration less than fair for such transfer, lien, or obligation, may retain the property, lien, or obligation as security for repayment. The court may, on due notice, order any such transfer or obligation to be preserved for the benefit of the estate, and in that event, the receiver shall succeed to and may enforce the rights of the purchaser, lienor, or obligee.

b. (1) A transfer of property other than real property is made when it becomes perfected so that a subsequent lien obtainable by legal or equitable proceedings on a simple contract could not become superior to the rights of the transferee under subsection 9, paragraph "c".

(2) A transfer of real property is made when it becomes perfected so that a subsequent bona fide purchaser from the funeral establishment could not obtain rights superior to the rights of the transferee.

(3) A transfer which creates an equitable lien is not perfected if there are available means by which a legal lien could be created.

(4) A transfer not perfected prior to the filing of a petition for liquidation is deemed to be made immediately before the filing of the successful petition.

(5) This subsection applies whether or not there are or were creditors who might have obtained a lien or persons who might have become bona fide purchasers.

#### 8. FRAUDULENT TRANSFER AFTER PETITION.

a. After a petition for liquidation has been filed a transfer of real property of the funeral

establishment made to a person acting in good faith is valid against the liquidator if made for a present fair equivalent value. If the transfer was not made for a present fair equivalent value, then the transfer is valid to the extent of the present consideration actually paid for which amount the transferee shall have a lien on the property transferred. The commencement of a proceeding in liquidation is constructive notice upon the recording of a copy of the petition for or order of liquidation with the recorder of deeds in the county where any real property in question is located. The exercise by a court of the United States or a state or jurisdiction to authorize a judicial sale of real property of the funeral establishment within a county in a state shall not be impaired by the pendency of a proceeding unless the copy is recorded in the county prior to the consummation of the judicial sale.

b. After a petition for liquidation has been filed and before either the receiver takes possession of the property of the funeral establishment or an order of liquidation is granted:

(1) A transfer of the property, other than real property, of the funeral establishment made to a person acting in good faith is valid against the receiver if made for a present fair equivalent value. If the transfer was not made for a present fair equivalent value, then the transfer is valid to the extent of the present consideration actually paid for which amount the transferee shall have a lien on the property transferred.

(2) If acting in good faith, a person indebted to the funeral establishment or holding property of the funeral establishment may pay the debt or deliver the property, or any part of the property, to the funeral establishment or upon the funeral establishment's order as if the petition were not pending.

(3) A person having actual knowledge of the pending liquidation is not acting in good faith.

(4) A person asserting the validity of a transfer under this subsection has the burden of proof. Except as provided in this subsection, a transfer by or on behalf of the funeral establishment after the date of the petition for liquidation by any person other than the liquidator is not valid against the liquidator.

c. A person receiving any property from the funeral establishment or any benefit of the property of the funeral establishment which is a fraudulent transfer under paragraph "a" is personally liable for the property or benefit and shall account to the liquidator.

d. This chapter does not impair the negotiability of currency or negotiable instruments.

#### 9. VOIDABLE PREFERENCES AND LIENS.

a. (1) A preference is a transfer of the property of a funeral establishment to or for the benefit of a creditor for an antecedent debt made or suffered by the funeral establishment within one year before the filing of a successful petition for liquidation under this chapter, the effect of which transfer may be to enable the creditor to obtain a greater percentage of this debt than another creditor of the same class would receive. If a liquidation order is entered while the funeral establishment is already subject to a receivership, then the transfers are preferences if made or suffered within one year before the filing of the successful petition for the receivership, or within two years before the filing of the successful petition for liquidation, whichever time is shorter.

(2) A preference may be avoided by the liquidator if any of the following exist:

(a) The funeral establishment was insolvent at the time of the transfer.

(b) The transfer was made within four months before the filing of the petition.

(c) At the time the transfer was made, the creditor receiving it or to be benefited by the transfer or the creditor's agent acting with reference to the transfer had reasonable cause to believe that the funeral establishment was insolvent or was about to become insolvent.

(d) The creditor receiving the transfer was an officer, or an employee, attorney, or other person who was in fact in a position of comparable influence in the funeral establishment to an officer whether or not the person held the position of an officer, owner, or other person, firm, corporation, association, or aggregation of persons with whom the funeral establishment did not deal at arm's length.

(3) Where the preference is voidable, the liquidator may recover the property. If the

property has been converted, the liquidator may recover its value from a person who has received or converted the property. However, if a bona fide purchaser or lienor has given less than fair equivalent value, the purchaser or lienor shall have a lien upon the property to the extent of the consideration actually given. Where a preference by way of lien or security interest is voidable, the court may on due notice order the lien or security interest to be preserved for the benefit of the estate, in which event the lien or title shall pass to the liquidator.

b. (1) A transfer of property other than real property is made when it becomes perfected so that a subsequent lien obtainable by legal or equitable proceedings on a simple contract could not become superior to the rights of the transferee.

(2) A transfer of real property is made when it becomes perfected so that a subsequent bona fide purchaser from the funeral establishment could not obtain rights superior to the rights of the transferee.

(3) A transfer which creates an equitable lien is not perfected if there are available means by which a legal lien could be created.

(4) A transfer not perfected prior to the filing of a petition for liquidation is deemed to be made immediately before the filing of the successful petition.

(5) This subsection applies whether or not there are or were creditors who might have obtained liens or persons who might have become bona fide purchasers.

c. (1) A lien obtainable by legal or equitable proceedings upon a simple contract is one arising in the ordinary course of the proceedings upon the entry or docketing of a judgment or decree, or upon attachment, garnishment, execution, or like process, whether before, upon, or after judgment or decree and whether before or upon levy. It does not include liens which under applicable law are given a special priority over other liens which are prior in time.

(2) A lien obtainable by legal or equitable proceedings could become superior to the rights of a transferee, or a purchaser could obtain rights superior to the rights of a transferee within the meaning of paragraph "b", if such consequences would follow only from the lien or purchase itself, or from the lien or purchase followed by a step wholly within the control of the respective lienholder or purchaser, with or without the aid of ministerial action by public officials. However, a lien could not become superior and a purchase could not create superior rights for the purpose of paragraph "b" through an act subsequent to the obtaining of a lien or subsequent to a purchase which requires the agreement or concurrence of any third party or which requires further judicial action or ruling.

d. A transfer of property for or on account of a new and contemporaneous consideration, which is under paragraph "b" made or suffered after the transfer because of delay in perfecting it, does not become a transfer for or on account of an antecedent debt if any acts required by the applicable law to be performed in order to perfect the transfer as against liens or a bona fide purchaser's rights are performed within twenty-one days or any period expressly allowed by the law, whichever is less. A transfer to secure a future loan, if a loan is actually made, or a transfer which becomes security for a future loan, shall have the same effect as a transfer for or on account of a new and contemporaneous consideration.

e. If a lien voidable under paragraph "a", subparagraph (2), has been dissolved by the furnishing of a bond or other obligation, the surety on which has been indemnified directly or indirectly by the transfer or the creation of a lien upon property of a funeral establishment before the filing of a petition under this chapter which results in a liquidation order, the indemnifying transfer or lien is also voidable.

f. The property affected by a lien voidable under paragraphs "a" and "e" is discharged from the lien. The property and any of the indemnifying property transferred to or for the benefit of a surety shall pass to the liquidator. However, the court may on due notice order a lien to be preserved for the benefit of the estate and the court may direct that the conveyance be executed to evidence the title of the liquidator.

g. The court shall have summary jurisdiction of a proceeding by the liquidator to hear

and determine the rights of the parties under this section. Reasonable notice of hearing in the proceeding shall be given to all parties in interest, including the obligee of a releasing bond or other like obligation. Where an order is entered for the recovery of indemnifying property in kind or for the avoidance of an indemnifying lien, upon application of any party in interest, the court shall in the same proceeding ascertain the value of the property or lien. If the value is less than the amount for which the property is indemnified or less than the amount of the lien, the transferee or lienholder may elect to retain the property or lien upon payment of its value, as ascertained by the court, to the liquidator within the time as fixed by the court.

h. The liability of a surety under a releasing bond or other like obligation is discharged to the extent of the value of the indemnifying property recovered or the indemnifying lien nullified and avoided by the liquidator. Where the property is retained under paragraph "g", the liability of the surety is discharged to the extent of the amount paid to the liquidator.

i. If a creditor has been preferred for property which becomes a part of the funeral establishment's estate, and afterward in good faith gives the funeral establishment further credit without security of any kind, the amount of the new credit remaining unpaid at the time of the petition may be set off against the preference which would otherwise be recoverable from the creditor.

j. If within four months before the filing of a successful petition for liquidation under this chapter, or at any time in contemplation of a proceeding to liquidate, a funeral establishment, directly or indirectly, pays money or transfers property to an attorney for services rendered or to be rendered, the transaction may be examined by the court on its own motion or shall be examined by the court on petition of the liquidator. The payment or transfer shall be held valid only to the extent of a reasonable amount to be determined by the court. The excess may be recovered by the liquidator for the benefit of the estate. However, where the attorney is in a position of influence in the funeral establishment or an affiliate, payment of any money or the transfer of any property to the attorney for services rendered or to be rendered shall be governed by the provision of paragraph "a", subparagraph (2), subparagraph subdivision (d).

k. (1) An officer, manager, employee, shareholder, subscriber, attorney, or any other person acting on behalf of the funeral establishment who knowingly participates in giving any preference when the person has reasonable cause to believe the funeral establishment is or is about to become insolvent at the time of the preference is personally liable to the liquidator for the amount of the preference. There is an inference that reasonable cause exists if the transfer was made within four months before the date of filing of this successful petition for liquidation.

(2) A person receiving property from the funeral establishment or the benefit of the property of the funeral establishment as a preference voidable under paragraph "a" is personally liable for the property and shall account to the liquidator.

(3) This subsection shall not prejudice any other claim by the liquidator against any person.

#### 10. CLAIMS OF HOLDER OF VOID OR VOIDABLE RIGHTS.

a. A claim of a creditor who has received or acquired a preference, lien, conveyance, transfer, assignment, or encumbrance, voidable under this chapter, shall not be allowed unless the creditor surrenders the preference, lien, conveyance, transfer, assignment, or encumbrance. If the avoidance is effected by a proceeding in which a final judgment has been entered, the claim shall not be allowed unless the money is paid or the property is delivered to the liquidator within thirty days from the date of the entering of the final judgment. However, the court having jurisdiction over the liquidation may allow further time if there is an appeal or other continuation of the proceeding.

b. A claim allowable under paragraph "a" by reason of a voluntary or involuntary avoidance, preference, lien, conveyance, transfer, assignment, or encumbrance may be filed as an excused late filing under subsection 12, if filed within thirty days from the date of the

avoidance or within the further time allowed by the court under paragraph "a".

11. LIQUIDATOR'S PROPOSAL TO DISTRIBUTE ASSETS.

a. From time to time as assets become available, the liquidator shall make application to the court for approval of a proposal to disburse assets out of marshaled assets.

b. The proposal shall at least include provisions for all of the following:

(1) Reserving amounts for the payment of all the following:

(a) Expenses of administration.

(b) To the extent of the value of the security held, the payment of claims of secured creditors.

(c) Claims falling within the priorities established in subsection 18, paragraphs "a" and "b".

(2) Disbursement of the assets marshaled to date and subsequent disbursement of assets as they become available.

c. Action on the application may be taken by the court provided that the liquidator's proposal complies with paragraph "b".

12. FILING OF CLAIMS.

a. Proof of all claims shall be filed with the liquidator in the form required by subsection 13 on or before the last day for filing specified in the notice required under subsection 4.

b. The liquidator may permit a claimant making a late filing to share in distributions, whether past or future, as if the claimant were not late, to the extent that the payment will not prejudice the orderly administration of the liquidation under any of the following circumstances:

(1) The existence of the claim was not known to the claimant and that the claimant filed the claim as promptly as reasonably possible after learning of it.

(2) A transfer to a creditor was avoided under subsections 7 through 9, or was voluntarily surrendered under subsection 10, and that the filing satisfies the conditions of subsection 10.

(3) The valuation under subsection 17 of security held by a secured creditor shows a deficiency, which is filed within thirty days after the valuation.

c. The liquidator may consider any claim filed late and permit the claimant to receive distributions which are subsequently declared on any claims of the same or lower priority if the payment does not prejudice the orderly administration of the liquidation. The late-filing claimant shall receive at each distribution the same percentage of the amount allowed on the claim as is then being paid to claimants of any lower priority. This shall continue until the claim has been paid in full.

13. PROOF OF CLAIM.

a. Proof of claim shall consist of a statement signed by the claimant that includes all of the following that are applicable:

(1) The particulars of the claim, including the consideration given for it.

(2) The identity and amount of the security on the claim.

(3) The payments, if any, made on the debt.

(4) A statement that the sum claimed is justly owing and that there is no setoff, counterclaim, or defense to the claim.

(5) Any right of priority of payment or other specific right asserted by the claimant.

(6) A copy of the written instrument which is the foundation of the claim.

(7) The name and address of the claimant and the attorney who represents the claimant, if any.

b. A claim need not be considered or allowed if it does not contain all the information identified in paragraph "a" which is applicable. The liquidator may require that a prescribed form be used and may require that other information and documents be included.

c. At any time the liquidator may request the claimant to present information or evidence supplementary to that required under paragraph "a", and may take testimony under oath, require production of affidavits or depositions, or otherwise obtain additional infor-

mation or evidence.

d. A judgment or order against a funeral establishment entered after the date of filing of a successful petition for liquidation, or a judgment or order against the funeral establishment entered at any time by default or by collusion need not be considered as evidence of liability or of the amount of damages. A judgment or order against a funeral establishment before the filing of the petition need not be considered as evidence of liability or of the amount of damages.

#### 14. SPECIAL CLAIMS.

a. A claim may be allowed even if contingent, if it is filed pursuant to subsection 12. The claim may be allowed and the claimant may participate in all distributions declared after it is filed to the extent that it does not prejudice the orderly administration of the liquidation.

b. Claims that are due except for the passage of time shall be treated as absolute claims are treated. However, the claims may be discounted at the legal rate of interest.

c. Claims made under employment contracts by directors, principal officers, or persons in fact performing similar functions or having similar powers are limited to payment for services rendered prior to the issuance of an order of liquidation under subsection 2.

#### 15. DISPUTED CLAIMS.

a. If a claim is denied in whole or in part by the liquidator, written notice of the determination shall be given to the claimant or the claimant's attorney by first class mail at the address shown in the proof of claim. Within sixty days from the mailing of the notice, the claimant may file objections with the liquidator. Unless a filing is made, the claimant shall not further object to the determination.

b. If objections are filed with the liquidator and the liquidator does not alter the denial of the claim as a result of the objections, the liquidator shall ask the court for a hearing as soon as practicable and give notice of the hearing by first class mail to the claimant or the claimant's attorney and to any other persons directly affected. The notice shall be given not less than ten nor more than thirty days before the date of the hearing. The matter shall be heard by the court or by a court-appointed referee. The referee shall submit findings of fact along with a recommendation.

16. CLAIMS OF OTHER PERSON. If a creditor, whose claim against a funeral establishment is secured in whole or in part by the undertaking of another person, fails to prove and file that claim, then the other person may do so in the creditor's name and shall be subrogated to the rights of the creditor, whether the claim has been filed by the creditor or by the other person in the creditor's name to the extent that the other person discharges the undertaking. However, in the absence of an agreement with the creditor to the contrary, the other person is not entitled to any distribution until the amount paid to the creditor on the undertaking plus the distributions paid on the claim from the funeral establishment's estate to the creditor equal the amount of the entire claim of the creditor. An excess received by the creditor shall be held by the creditor in trust for the other person.

#### 17. SECURED CREDITOR'S CLAIMS.

a. The value of security held by a secured creditor shall be determined in one of the following ways, as the court may direct:

(1) By converting the security into money according to the terms of the agreement pursuant to which the security was delivered to the creditors.

(2) By agreement, arbitration, compromise, or litigation between the creditor and the liquidator.

b. The determination shall be under the supervision and control of the court with due regard for the recommendation of the liquidator. The amount so determined shall be credited upon the secured claim. A deficiency shall be treated as an unsecured claim. If the claimant surrenders the security to the liquidator, the entire claim shall be allowed as if unsecured.

18. PRIORITY OF DISTRIBUTION. The priority of distribution of claims from the funeral establishment's estate shall be in accordance with the order in which each class of claims is set forth. Claims in each class shall be paid in full or adequate funds retained for

the payment before the members of the next class receive any payment. Subclasses shall not be established within a class. The order of distribution of claims is as follows:

a. CLASS 1. The costs and expenses of administration, including but not limited to the following:

(1) The actual and necessary costs of preserving or recovering the assets of the funeral establishment.

(2) Compensation for all authorized services rendered in the liquidation.

(3) Necessary filing fees.

(4) The fees and mileage payable to witnesses.

(5) Authorized reasonable attorney's fees and other professional services rendered in the liquidation.

b. CLASS 2. Reasonable compensation to employees for services performed to the extent that they do not exceed two months of monetary compensation and represent payment for services performed within one year before the filing of the petition for liquidation. Officers and directors are not entitled to the benefit of this priority. The priority is in lieu of other similar priority which may be authorized by law as to wages or compensation of employees.

c. CLASS 3. Claims under at-need and preneed funeral contracts.

d. CLASS 4. Claims of general creditors.

e. CLASS 5. Claims of the federal or any state or local government. Claims, including those of a governmental body for a penalty or forfeiture, are allowed in this class only to the extent of the pecuniary loss sustained from the act, transaction, or proceeding out of which the penalty or forfeiture arose, with reasonable and actual costs incurred. The remainder of such claims shall be postponed to the class of claims under paragraph "g".

f. CLASS 6. Claims filed late or any other claims other than claims under paragraph "g".

g. CLASS 7. The claims of shareholders or other owners.

#### 19. LIQUIDATOR'S RECOMMENDATIONS TO THE COURT.

a. The liquidator shall review claims duly filed in the liquidation and shall make further investigation as necessary. The liquidator may compound, compromise, or in any other manner negotiate the amount for which claims will be recommended to the court except where the liquidator is required by law to accept claims as settled by a person or organization. Unresolved disputes shall be determined under subsection 15. As soon as practicable, the liquidator shall present to the court a report of the claims against the funeral establishment with the liquidator's recommendations. The report shall include the name and address of each claimant and the amount of the claim finally recommended.

b. The court may approve, disapprove, or modify the report on claims by the liquidator. Reports not modified by the court within sixty days following submission by the liquidator shall be treated by the liquidator as allowed claims, subject to later modification or to rulings made by the court pursuant to subsection 15. A claim under a policy of insurance shall not be allowed for an amount in excess of the applicable policy limits.

20. DISTRIBUTION OF ASSETS. Under the direction of the court, the liquidator shall pay distributions in a manner that will assure the proper recognition of priorities and a reasonable balance between the expeditious completion of the liquidation and the protection of unliquidated and undetermined claims, including third-party claims. Distribution of assets in kind may be made at valuations set by agreement between the liquidator and the creditor and approved by the court.

#### 21. UNCLAIMED AND WITHHELD FUNDS.

a. Unclaimed funds subject to distribution remaining in the liquidator's hands when the liquidator is ready to apply to the court for discharge, including the amount distributable to a creditor, owner, or other person who is unknown or cannot be found, shall be deposited with the treasurer of state, and shall be paid without interest, except as provided in subsection 18, to the person entitled or the person's legal representative upon proof sat-

isfactory to the treasurer of state of the right to the funds. An amount on deposit not claimed within six years from the discharge of the liquidator is deemed to have been abandoned and shall become the property of the state without formal escheat proceedings and be transferred to the insurance division regulatory fund.

b. Funds withheld under subsection 14 and not distributed shall upon discharge of the liquidator be deposited with the treasurer of state and paid pursuant to subsection 18. Sums remaining which under subsection 18 would revert to the undistributed assets of the funeral establishment shall be transferred to the insurance division regulatory fund and become the property of the state as provided under paragraph "a", unless the commissioner in the commissioner's discretion petitions the court to reopen the liquidation pursuant to subsection 23.

c. Notwithstanding any other provision of this chapter, funds as identified in paragraph "a", with the approval of the court, shall be made available to the commissioner for use in the detection and prevention of future insolvencies. The commissioner shall hold these funds in the insurance division regulatory fund and shall pay without interest, except as provided in subsection 18, to the person entitled to the funds or the person's legal representative upon proof satisfactory to the commissioner of the person's right to the funds. The funds shall be held by the commissioner for a period of two years at which time the rights and duties to the unclaimed funds shall vest in the commissioner.

#### 22. TERMINATION OF PROCEEDINGS.

a. When all assets justifying the expense of collection and distribution have been collected and distributed under this chapter, the liquidator shall apply to the court for discharge. The court may grant the discharge and make any other orders, including an order to transfer remaining funds that are uneconomical to distribute, as appropriate.

b. Any other person may apply to the court at any time for an order under paragraph "a". If the application is denied, the applicant shall pay the costs and expenses of the liquidator in resisting the application, including a reasonable attorney's fee.

23. REOPENING LIQUIDATION. At any time after the liquidation proceeding has been terminated and the liquidator discharged, the commissioner or other interested party may petition the court to reopen the proceedings for good cause including the discovery of additional assets. The court shall order the proceeding reopened if it is satisfied that there is justification for the reopening.

24. DISPOSITION OF RECORDS DURING AND AFTER TERMINATION OF LIQUIDATION. If it appears to the commissioner that the records of a funeral establishment in process of liquidation or completely liquidated are no longer useful, the commissioner may recommend to the court and the court shall direct what records shall be retained for future reference and what records shall be destroyed.

25. EXTERNAL AUDIT OF RECEIVER'S BOOKS. The court may order audits to be made of the books of the commissioner relating to a receivership established under this chapter, and a report of each audit shall be filed with the commissioner and with the court. The books, records, and other documents of the receivership shall be made available to the auditor at any time without notice. The expense of an audit shall be considered a cost of administration of the receivership.

#### Sec. 11. NEW SECTION. 523A.23 MINIMUM FIDELITY BOND OR INSURANCE POLICY.

The seller, in connection with an offer or sale of an agreement referred to in section 523A.1, shall obtain and maintain at all times a fidelity bond or insurance policy covering losses resulting from dishonest or fraudulent acts committed by employees of the seller which cause a loss, theft, or misappropriation of cash, property, or a negotiable instrument submitted to the seller pursuant to the agreement. The fidelity bond or insurance policy must be maintained in an amount not less than fifty thousand dollars.

#### Sec. 12. Section 523E.1, subsection 1, Code 1995, is amended to read as follows:

1. If an agreement is made by a person to furnish, upon the future death of a person named or implied in the agreement, cemetery merchandise, a minimum of one hundred

twenty-five percent of the wholesale cost of the cemetery merchandise, based upon the current advertised prices available from a manufacturer or wholesaler who has delivered the same or substantially the same type of merchandise to the seller during the last twelve months, shall be and remain trust funds until purchase of the merchandise or the occurrence of the death of the person for whose benefit the funds were paid, unless the funds are sooner released to the person making the payment by mutual consent of the parties. Payments otherwise subject to this section are not exempt merely because they are held in certificates of deposit. The commissioner may adopt rules to prohibit the commingling of trust funds with other funds of the seller.

Sec. 13. Section 523E.1, Code 1995, is amended by adding the following new subsection:

**NEW SUBSECTION.** 5. An agreement may be funded by insurance proceeds derived from a policy issued by an insurance company authorized to conduct business in this state. Such funding may be in lieu of a trust fund if the payments are made directly to the insurance company by the purchaser of the agreement.

Sec. 14. Section 523E.2, subsection 1, paragraphs a and c, Code 1995, are amended to read as follows:

a. All funds held in trust under section 523E.1 shall be deposited in a state or federally insured bank, savings and loan association, or credit union authorized to conduct business in this state, or trust department thereof of such bank, savings and loan association, or credit union, or in a trust company authorized to conduct business in this state, within fifteen days after the close of the month of receipt of the funds and shall be held as provided in paragraph "g" for the designated beneficiary until released pursuant to section 523E.1.

c. The seller under an agreement referred to in section 523E.1 shall file with the commissioner not later than March 1 of each year a report including the following information:

(1) The name and address of the seller and the name and address of the establishment that will provide the cemetery merchandise.

(2) ~~The name of the purchaser, beneficiary, and the amount of each agreement under section 523E.1 made in the preceding year and the date on which it was made. The balance of each trust account as of the end of the immediately preceding calendar year, identified by the name of the purchaser or the beneficiary, and a report of any amounts withdrawn from trust and the reason for each withdrawal.~~

(3) ~~The total value of agreements subject to section 523E.1 entered into, the total amount paid pursuant to those agreements, and the total amount deposited in trust as required under section 523E.1, during the preceding year. A description of insurance funding outstanding at the end of the immediately preceding calendar year, identified by the name of the purchaser or the beneficiary, and a report of any insurance payments received by the seller.~~

(4) ~~The amount of any payments received pursuant to agreements reported in previous years in accordance with subparagraphs (2) and (3) and the amount of those payments deposited in trust for each purchaser.~~

(5) ~~The change in status of any trust account, for each purchaser, any other amounts withdrawn from trust and the reason for each withdrawal. However, regular increments of interest or income need not be reported on a yearly basis.~~

(6) ~~The name and address of the financial institution in which trust funds were deposited, and the name and address of each insurance company which funds agreements under section 523E.1.~~

(7) ~~The name and address of each purchaser of cemetery merchandise delivered in lieu of trusting pursuant to section 523E.1, and a description of that merchandise for each purchaser.~~

(8) (4) The A complete inventory of cemetery merchandise and its location in the seller's

possession that has been delivered in lieu of trusting pursuant to section 523E.1-

~~(9) Other information reasonably required by the commissioner for purposes of administration of this chapter.~~

~~The information required by subparagraphs (7) and (8) shall include, including the location of the merchandise, serial numbers or warehouse receipt numbers, identified by the name of the purchaser or the beneficiary, and a verified statement of a certified public accountant that the certified public accountant has conducted a physical inventory of the cemetery merchandise specified in subparagraph (8) and that each item of that merchandise is in the seller's possession at the specified location. The statement shall be on a form prescribed by the commissioner. The commissioner shall permit the filing of a unified annual report by a seller subject to both chapter 523A and this chapter.~~

~~(5) The name of the purchaser, beneficiary, and the amount of each agreement referred to in section 523E.1 made in the preceding year and the date on which it was made.~~

~~(6) Other information reasonably required by the commissioner for purposes of administration of this chapter.~~

The report shall be accompanied by a filing fee determined by the commissioner which shall be sufficient to defray the costs of administering this chapter.

Sec. 15. Section 523E.2, subsection 6, Code 1995, is amended to read as follows:

6. This chapter does not prohibit the funding of an agreement ~~otherwise subject to section 523E.1~~ by insurance proceeds derived from a policy issued by an insurance company authorized to conduct business in this state. The seller of an agreement subject to this chapter which is to be funded by insurance proceeds shall obtain all permits required to be obtained under this chapter and comply with the reporting requirements of this section.

Sec. 16. Section 523E.8, subsection 1, paragraphs e, h, and j, Code 1995, are amended to read as follows:

e. State clearly whether the agreement is a guaranteed price contract or a nonguaranteed price contract. Each nonguaranteed price contract shall contain in twelve point bold type, an explanation of the consequences in substantially the following language:

THE PRICES OF MERCHANDISE AND SERVICES UNDER THIS CONTRACT ARE SUBJECT TO CHANGE IN THE FUTURE. ANY FUNDS PAID UNDER THIS CONTRACT ARE ONLY A DEPOSIT TO BE APPLIED, TOGETHER WITH ACCRUED INCOME, TOWARD THE FINAL COSTS OF THE MERCHANDISE OR SERVICES CONTRACTED FOR. ADDITIONAL CHARGES MAY BE REQUIRED.

~~h. Explain the disposition of the interest and disclose what fees and expenses may be charged if incurred income generated from investments, include a statement of fees, expenses, and taxes which may be deducted, and include a statement of the buyer's responsibility for income taxes owed on the income, if applicable.~~

~~j. State the name and address of the commissioner. Include an explanation of regulatory oversight by the insurance division in twelve point bold type, in substantially the following language:~~

THIS CONTRACT MUST BE REPORTED TO THE IOWA INSURANCE DIVISION BY THE FIRST DAY OF MARCH OF THE FOLLOWING YEAR. YOU MAY CALL THE INSURANCE DIVISION AT (INSERT TELEPHONE NUMBER) TO CONFIRM THAT YOUR CONTRACT HAS BEEN REPORTED. WRITTEN INQUIRIES OR COMPLAINTS SHOULD BE MAILED TO THE FOLLOWING ADDRESS: IOWA SECURITIES BUREAU (INSERT ADDRESS).

Sec. 17. Section 523E.8, subsection 1, Code 1995, is amended by adding the following new subsection:

**NEW SUBSECTION.** 1A. The commissioner may adopt rules establishing disclosure and format requirements to promote consumers' understanding of the cemetery merchandise purchased and the available funding mechanisms under an agreement for

cemetery merchandise under this chapter.

Sec. 18. Section 523E.8, Code 1995, is amended by adding the following new subsection:

**NEW SUBSECTION.** 3. The seller shall disclose at the time an application is made by an individual and prior to accepting the applicant's initial premium or deposit for a preneed funeral contract or prearrangement subject to section 523E.1 which is funded by a life insurance policy, the following information:

- a. That a life insurance policy is involved or being used to fund an agreement.
- b. The nature of the relationship among the soliciting agent or agents, the provider of the funeral or cemetery merchandise or services, the administrator, and any other person.
- c. The relationship of the life insurance policy to the funding of the prearrangement and the nature and existence of any guarantees relating to the prearrangement.
- d. The impact on the prearrangement of the following:
  - (1) Changes in the life insurance policy including, but not limited to, changes in the assignment, beneficiary designation, or use of proceeds.
  - (2) Any penalties to be incurred by the policyholder as a result of the failure to make premium payments.
  - (3) Penalties to be incurred or cash to be received as a result of the cancellation or surrender of the life insurance policy.
- e. A list of merchandise and services which are applied or contracted for in the prearrangement and all relevant information concerning the price of the merchandise and services, including an indication that the purchase price is either guaranteed at the time of purchase or to be determined at the time of need.
- f. All relevant information concerning what occurs and whether any entitlements or obligations arise if there is a difference between the proceeds of the life insurance policy and the amount actually needed to fund the agreement.
- g. Any penalties or restrictions, including but not limited to, geographic restrictions or the inability of the provider to perform, on the delivery of merchandise, services, or the prearrangement guarantee.
- h. That a sales commission or other form of compensation is being paid and, if so, the identity of the individuals or entities to whom it is paid.

Sec. 19. Section 523E.20, Code 1995, is amended to read as follows:

523E.20 INSURANCE DIVISION'S REGULATORY FUND.

The insurance division may authorize the creation of a special revenue fund in the state treasury, to be known as the insurance division regulatory fund. ~~Commencing July 1, 1990, and annually thereafter, the~~ The commissioner shall allocate annually from the fees paid pursuant to section 523E.2, ~~one dollar~~ two dollars for each agreement reported on an establishment permit holder's annual report for deposit to the regulatory fund. The remainder of the fees collected pursuant to section 523E.2 shall be deposited into the general fund of the state. In addition, on May 1 of ~~1994~~ 1996 and ~~1995~~ 1997, the commissioner, to the extent necessary to fund consumer education, audits, investigations, payments under contract with licensed establishments to provide funeral and cemetery merchandise or services in the event of statutory noncompliance by the initial seller, liquidations, and receiverships, shall assess establishment permit holders five two dollars for each agreement reported on the establishment permit holder's annual report of sales executed during the preceding year, which shall be deposited in the insurance division regulatory fund. ~~However, if the balance of the regulatory fund on that July 1 exceeds two hundred thousand dollars, the allocation to the regulatory fund shall not be made and the total sum of the fees paid pursuant to section 523E.2 shall be deposited in the general fund of the state.~~ The moneys in the regulatory fund shall be retained in the fund. The moneys are appropriated and, subject to authorization by the commissioner, may be used to pay auditors, audit expenses, investigative expenses, and the expenses of receiverships established pursuant to section 523E.19. An annual assessment shall not be imposed if the current balance of the fund exceeds two hundred thousand dollars.

Sec. 20. **NEW SECTION.** 523E.21 LICENSE REVOCATION – RECOMMENDATION BY COMMISSIONER TO BOARD OF MORTUARY SCIENCE EXAMINERS.

Upon a determination by the commissioner that grounds exist for an administrative license revocation action by the board of mortuary science examiners under chapter 156, the commissioner may forward to the board the grounds for the determination, including all evidence in the possession of the commissioner, so that the board may proceed with the matter as deemed appropriate.

**Sec. 21. NEW SECTION. 523E.22 MINIMUM FIDELITY BOND OR INSURANCE POLICY.**

The seller, in connection with an offer or sale of an agreement referred to in section 523E.1, shall obtain and maintain at all times a fidelity bond or insurance policy covering losses resulting from dishonest or fraudulent acts committed by employees of the seller which cause a loss, theft, or misappropriation of cash, property, or a negotiable instrument submitted to the seller pursuant to the agreement. The fidelity bond or insurance policy must be maintained in an amount not less than fifty thousand dollars.

**Sec. 22. NEW SECTION. 523J.1 DEFINITIONS.**

As used in this chapter, unless the context otherwise requires:

1. "Abandoned cemetery" means any cemetery where there has been a failure to cut grass or weeds or care for graves, grave markers, walls, fences, driveways, and buildings, or for which proper records have not been maintained.

2. "Cemetery" means a cemetery, mausoleum, columbarium, or other space held for the purpose of burial, entombment, or inurnment of human remains, and which is subject to this chapter.

3. "Commissioner" means the commissioner of insurance or the deputy appointed under section 502.601.

4. "Interment rights" means a right of use conveyed by contract or property ownership to inter human rights\* in a columbarium, grave, mausoleum, lawn crypt, or undeveloped space.

5. "Perpetual care cemetery" means a cemetery which has established a perpetual care fund for the maintenance, repair, and care of all interment spaces subject to perpetual care within the cemetery in compliance with section 566A.3 or 566A.4.

**Sec. 23. NEW SECTION. 523J.2 CEMETERIES COMMENCING BUSINESS AFTER JULY 1, 1995.**

A cemetery which is organized or commences business in this state on or after July 1, 1995, shall operate as a perpetual care cemetery and is subject to this chapter and other applicable law.

**Sec. 24. NEW SECTION. 523J.3 PERMIT REQUIREMENTS.**

1. A perpetual care cemetery shall not sell or offer interment rights to the public without a permit as provided for in this section.

2. Applications for a permit shall be made to and filed with the commissioner on forms approved by the commissioner and accompanied by a filing fee of twenty dollars. If the application contains the following information, the commissioner shall issue the license:

(a) The name and principal address of the applicant.

(b) The identity of the applicant's owner or owners.

(c) Evidence of a trust fund for cemetery maintenance and care in compliance with section 566A.3 or 566A.4.

3. Each permit issued under this chapter shall expire on June 30 of the year following the date of issuance.

**Sec. 25. NEW SECTION. 523J.4 DENIAL, SUSPENSION, OR REVOCATION OF PERMIT.**

The commissioner, pursuant to chapter 17A, may deny, suspend, or revoke any permit to operate a cemetery if the commissioner finds any of the following:

1. The cemetery has committed a fraudulent practice, or the cemetery's trust assets,

\*The term "human remains" probably intended

warehoused merchandise, surety bonds, or insurance funding are in material noncompliance with chapter 523A or 523E or section 566A.3 or 566A.4.

2. An owner or officer of the cemetery has been convicted of a felony related to the sale of interment rights or the sale of funeral services, funeral merchandise, or cemetery merchandise, as defined in section 523A.5, subsection 2, paragraphs "a" and "b", and section 523E.5, subsection 2, paragraph "a".

Sec. 26. **NEW SECTION.** 523J.5 LIQUIDATION.

1. **FOUNDATIONS FOR LIQUIDATION.** The commissioner may petition the district court for an order directing the commissioner to liquidate a perpetual care cemetery on any of the following grounds:

a. The cemetery's trust fund is in material noncompliance with the requirements of section 566A.3 or 566A.4 and is insolvent.

b. The cemetery's trust fund is in material noncompliance with the requirements of section 566A.3 or 566A.4 and the condition of the cemetery is such that the further transaction of business would be hazardous, financially or otherwise, to its customers or the public.

c. The cemetery has been abandoned.

2. **LIQUIDATION ORDER.**

a. An order to liquidate the business of a perpetual care cemetery shall appoint the commissioner as liquidator and shall direct the liquidator to immediately take possession of the assets of the cemetery and to administer them under the general supervision of the court. The liquidator is vested with the title to the property, contracts, and rights of action and the books and records of the cemetery ordered liquidated, wherever located, as of the entry of the final order of liquidation. The filing or recording of the order with the clerk of court and the recorder of deeds of the county in which its principal office or place of business is located, or, in the case of real estate with the recorder of deeds of the county where the property is located, is notice as a deed, bill of sale, or other evidence of title duly filed or recorded with the recorder of deeds.

b. Upon issuance of an order, the rights and liabilities of a cemetery and of the cemetery's creditors, customers, owners, and other persons interested in the cemetery's estate shall become fixed as of the date of the entry of the order of liquidation, except as provided in subsection 14.

c. At the time of petitioning for an order of liquidation, or at any time after the time of petitioning, the commissioner, after making appropriate findings of a cemetery's insolvency, may petition the court for a declaration of insolvency. After providing notice and hearing as it deems proper, the court may make the declaration.

d. An order issued under this section shall require accounting to the court by the liquidator. Accountings, at a minimum, must include all funds received or disbursed by the liquidator during the current period. An accounting shall be filed within one year of the liquidation order and at such other times as the court may require.

e. Within five days after the initiation of an appeal of an order of liquidation, which order has not been stayed, the commissioner shall present for the court's approval a plan for the continued performance of the cemetery's obligations during the pendency of an appeal. The plan shall provide for the continued performance of interment rights contracts in the normal course of events, notwithstanding the grounds alleged in support of the order of liquidation including the ground of insolvency. If the defendant cemetery's financial condition, in the judgment of the commissioner, will not support the full performance of all obligations during the appeal pendency period, the plan may prefer the claims of certain customers and claimants over creditors and interested parties as well as other customers and claimants, as the commissioner finds to be fair and equitable considering the relative circumstances of such customers and claimants. The court shall examine the plan submitted by the commissioner and if it finds the plan to be in the best interests of the parties, the court shall approve the plan. An action shall not lie against the commissioner

or any of the commissioner's deputies, agents, clerks, assistants, or attorneys by any party based on preference in an appeal pendency plan approved by the court.

### 3. POWERS OF LIQUIDATOR.

a. The liquidator may do any of the following:

(1) Appoint a special deputy to act for the liquidator under this chapter, and determine the special deputy's reasonable compensation. The special deputy shall have all the powers of the liquidator granted by this section. The special deputy shall serve at the pleasure of the liquidator.

(2) Hire employees and agents, legal counsel, accountants, appraisers, consultants, and other personnel as the commissioner may deem necessary to assist in the liquidation.

(3) With the approval of the court fix reasonable compensation of employees and agents, legal counsel, accountants, appraisers and consultants.

(4) Pay reasonable compensation to persons appointed and defray from the funds or assets of the cemetery all expenses of taking possession of, conserving, conducting, liquidating, disposing of, or otherwise dealing with the business and property of the cemetery. If the property of the cemetery does not contain sufficient cash or liquid assets to defray the costs incurred, the commissioner may advance the costs so incurred out of the insurance division cemetery fund. Amounts so advanced for expenses of administration shall be repaid to the insurance division cemetery fund for the use of the division out of the first available moneys of the cemetery.

(5) Hold hearings, subpoena witnesses, and compel their attendance, administer oaths, examine a person under oath, and compel a person to subscribe to the person's testimony after it has been correctly reduced to writing, and in connection to the proceedings require the production of books, papers, records, or other documents which the liquidator deems relevant to the inquiry.

(6) Collect debts and moneys due and claims belonging to the cemetery, wherever located. Pursuant to this subparagraph, the liquidator may do any of the following:

(a) Institute timely action in other jurisdictions to forestall garnishment and attachment proceedings against debts.

(b) Perform acts as are necessary or expedient to collect, conserve, or protect its assets or property, including the power to sell, compound, compromise, or assign debts for purposes of collection upon terms and conditions as the liquidator deems best.

(c) Pursue any creditor's remedies available to enforce claims.

(7) Conduct public and private sales of the property of the cemetery.

(8) Use assets of the cemetery under a liquidation order to transfer obligations of preneed funeral contracts to a solvent cemetery, if the transfer can be accomplished without prejudice to applicable priorities under subsection 18.

(9) Acquire, hypothecate, encumber, lease, improve, sell, transfer, abandon, or otherwise dispose of or deal with property of the cemetery at its market value or upon terms and conditions as are fair and reasonable. The liquidator shall also have power to execute, acknowledge, and deliver deeds, assignments, releases, and other instruments necessary to effectuate a sale of property or other transaction in connection with the liquidation.

(10) Borrow money on the security of the cemetery's assets or without security and execute and deliver documents necessary to that transaction for the purpose of facilitating the liquidation. Money borrowed pursuant to this subparagraph shall be repaid as an administrative expense and have priority over any other class 1 claims under the priority of distribution established in subsection 18.

(11) Enter into contracts as necessary to carry out the order to liquidate and affirm or disavow contracts to which the cemetery is a party.

(12) Continue to prosecute and to institute in the name of the cemetery or in the liquidator's own name any and all suits and other legal proceedings, in this state or elsewhere, and to abandon the prosecution of claims the liquidator deems unprofitable to pursue further.

(13) Prosecute an action on behalf of the creditors, customers, or owners against an officer of the cemetery or any other person.

(14) Remove records and property of the cemetery to the offices of the commissioner or to other places as may be convenient for the purposes of efficient and orderly execution of the liquidation.

(15) Deposit in one or more banks in this state sums as are required for meeting current administration expenses and distributions.

(16) Unless the court orders otherwise, invest funds not currently needed.

(17) File necessary documents for recording in the office of a recorder of deeds or record office in this state or elsewhere where property of the cemetery is located.

(18) Assert defenses available to the cemetery as against third persons including statutes of limitations, statutes of fraud, and the defense of usury. A waiver of a defense by the cemetery after a petition in liquidation has been filed shall not bind the liquidator.

(19) Exercise and enforce the rights, remedies, and powers of a creditor, customer, or owner, including the power to avoid transfer or lien that may be given by the general law and that is not included within subsections 7 through 9.

(20) Intervene in a proceeding wherever instituted that might lead to the appointment of a receiver or trustee, and act as the receiver or trustee whenever the appointment is offered.

(21) Exercise powers now held or later conferred upon receivers by the laws of this state which are not inconsistent with this chapter.

b. This subsection does not limit the liquidator or exclude the liquidator from exercising a power not listed in paragraph "a" that may be necessary or appropriate to accomplish the purposes of this chapter.

#### 4. NOTICE TO CREDITORS AND OTHERS.

a. Unless the court otherwise directs, the liquidator shall give notice of the liquidation order as soon as possible by doing all of the following:

(1) By first class mail to all persons known or reasonably expected to have claims against the cemetery by mailing a notice to their last known address as indicated by the records of the cemetery.

(2) By publication in a newspaper of general circulation in the county in which the cemetery has its principal place of business and in other locations as the liquidator deems appropriate.

b. Notice to potential claimants under paragraph "a" shall require claimants to file with the liquidator their claims together with proper proofs of the claim under subsection 13 on or before a date the liquidator shall specify in the notice. Claimants shall keep the liquidator informed of their changes of address, if any.

c. If notice is given pursuant to this section, the distribution of assets of the cemetery under this chapter shall be conclusive with respect to claimants, whether or not a claimant actually received notice.

#### 5. ACTIONS BY AND AGAINST LIQUIDATOR.

a. After the issuance of an order appointing a liquidator of a cemetery, an action at law or equity shall not be brought against the cemetery in this state or elsewhere, and existing actions shall not be maintained or further presented after issuance of the order. Whenever in the liquidator's judgment, protection of the estate of the cemetery necessitates intervention in an action against the cemetery that is pending outside this state, the liquidator may intervene in the action. The liquidator may defend, at the expense of the estate of the cemetery, an action in which the liquidator intervenes under this section.

b. Within two years or such additional time as applicable law may permit, the liquidator, after the issuance of an order for liquidation, may institute an action or proceeding on behalf of the estate of the cemetery upon any cause of action against which the period of limitation fixed by applicable law has not expired at the time of the filing of the petition upon which the order is entered. If a period of limitation is fixed by agreement for instituting a suit or proceeding upon a claim, or for filing a claim, proof of claim, proof of loss, demand, notice, or the like, or if in a proceeding, judicial or otherwise, a period of limitation

is fixed in the proceeding or pursuant to applicable law for taking an action, filing a claim or pleading, or doing an act, and if the period had not expired at the date of the filing of the petition, the liquidator, for the benefit of the estate, may take any action or do any act, required of or permitted to the cemetery, within a period of one hundred eighty days subsequent to the entry of an order for liquidation, or within a further period as is shown to the satisfaction of the court not to be unfairly prejudicial to the other party.

c. A statute of limitation or defense of laches shall not run with respect to an action against a cemetery between the filing of a petition for liquidation against the cemetery and the denial of the petition. An action against the cemetery that might have been commenced when the petition was filed may be commenced for at least sixty days after the petition is denied.

#### 6. COLLECTION AND LIST OF ASSETS.

a. As soon as practicable after the liquidation order but not later than one hundred twenty days after such order, the liquidator shall prepare in duplicate a list of the cemetery's assets. The list shall be amended or supplemented as the liquidator may determine. One copy shall be filed in the office of the clerk of court and one copy shall be retained for the liquidator's files. Amendments and supplements shall be similarly filed.

b. The liquidator shall reduce the assets to a degree of liquidity that is consistent with the effective execution of the liquidation.

c. A submission to the court for distribution of assets in accordance with subsection 11 fulfills the requirements of paragraph "a".

#### 7. FRAUDULENT TRANSFERS PRIOR TO PETITION.

a. A transfer made and an obligation incurred by a cemetery within one year prior to the filing of a successful petition for liquidation under this chapter is fraudulent as to then existing and future creditors if made or incurred without fair consideration, or with actual intent to hinder, delay, or defraud either existing or future creditors. A fraudulent transfer made or an obligation incurred by a cemetery ordered to be liquidated under this chapter may be avoided by the receiver, except as to a person who in good faith is a purchaser, lienor, or obligee for a present fair equivalent value. A purchaser, lienor, or obligee, who in good faith has given a consideration less than fair for such transfer, lien, or obligation, may retain the property, lien, or obligation as security for repayment. The court, on due notice, may order any such transfer or obligation to be preserved for the benefit of the estate, and in that event, the receiver shall succeed to and may enforce the rights of the purchaser, lienor, or obligee.

b. (1) A transfer of property other than real property is made when it becomes perfected so that a subsequent lien obtainable by legal or equitable proceedings on a simple contract could not become superior to the rights of the transferee under subsection 9, paragraph "c".

(2) A transfer of real property is made when it becomes perfected so that a subsequent bona fide purchaser from the cemetery could not obtain rights superior to the rights of the transferee.

(3) A transfer which creates an equitable lien is not perfected if there are available means by which a legal lien could be created.

(4) A transfer not perfected prior to the filing of a petition for liquidation is deemed to be made immediately before the filing of the successful petition.

(5) This subsection applies whether or not there are or were creditors who might have obtained a lien or persons who might have become bona fide purchasers.

#### 8. FRAUDULENT TRANSFER AFTER PETITION.

a. After a petition for liquidation has been filed a transfer of real property of the cemetery made to a person acting in good faith is valid against the receiver if made for a present fair equivalent value. If the transfer was not made for a present fair equivalent value, then the transfer is valid to the extent of the present consideration actually paid for which amount the transferee shall have a lien on the property transferred. The

commencement of a proceeding in liquidation is constructive notice upon the recording of a copy of the petition for or order of liquidation with the recorder of deeds in the county where any real property in question is located. The exercise by a court of the United States or a state or jurisdiction to authorize a judicial sale of real property of the cemetery within a county in a state shall not be impaired by the pendency of a proceeding unless the copy is recorded in the county prior to the consummation of the judicial sale.

b. After a petition for liquidation has been filed and before either the receiver takes possession of the property of the cemetery or an order of liquidation is granted:

(1) A transfer of the property, other than real property, of the cemetery made to a person acting in good faith is valid against the receiver if made for a present fair equivalent value. If the transfer was not made for a present fair equivalent value, then the transfer is valid to the extent of the present consideration actually paid for which amount the transferee shall have a lien on the property transferred.

(2) If acting in good faith, a person indebted to the cemetery or holding property of the cemetery may pay the debt or deliver the property, or any part of the property, to the cemetery or upon the cemetery's order as if the petition were not pending.

(3) A person having actual knowledge of the pending liquidation is not acting in good faith.

(4) A person asserting the validity of a transfer under this subsection has the burden of proof. Except as provided in this subsection, a transfer by or on behalf of the cemetery after the date of the petition for liquidation by any person other than the liquidator is not valid against the liquidator.

c. A person receiving any property from the cemetery or any benefit of the property of the cemetery which is a fraudulent transfer under paragraph "a" is personally liable for the property or benefit and shall account to the liquidator.

d. This chapter does not impair the negotiability of currency or negotiable instruments.

#### 9. VOIDABLE PREFERENCES AND LIENS.

a. (1) A preference is a transfer of the property of a cemetery to or for the benefit of a creditor for an antecedent debt made or suffered by the cemetery within one year before the filing of a successful petition for liquidation under this chapter, the effect of which transfer may be to enable the creditor to obtain a greater percentage of this debt than another creditor of the same class would receive. If a liquidation order is entered while the cemetery is already subject to a receivership, then the transfers are preferences if made or suffered within one year before the filing of the successful petition for the receivership, or within two years before the filing of the successful petition for liquidation, whichever time is shorter.

(2) A preference may be avoided by the liquidator if any of the following exist:

(a) The cemetery was insolvent at the time of the transfer.

(b) The transfer was made within four months before the filing of the petition.

(c) At the time the transfer was made, the creditor receiving it or to be benefited by the transfer or the creditor's agent acting with reference to the transfer had reasonable cause to believe that the cemetery was insolvent or was about to become insolvent.

(d) The creditor receiving the transfer was an officer, or an employee, attorney, or other person who was in fact in a position of comparable influence in the cemetery to an officer whether or not the person held the position of an officer, owner, or other person, firm, corporation, association, or aggregation of persons with whom the cemetery did not deal at arm's length.

(3) Where the preference is voidable, the liquidator may recover the property. If the property has been converted, the liquidator may recover its value from a person who has received or converted the property. However, if a bona fide purchaser or lienor has given less than fair equivalent value, the purchaser or lienor shall have a lien upon the property to the extent of the consideration actually given. Where a preference by way of lien or security interest is voidable, the court may on due notice order the lien or security interest

to be preserved for the benefit of the estate, in which event the lien or title shall pass to the liquidator.

b. (1) A transfer of property other than real property is made when it becomes perfected so that a subsequent lien obtainable by legal or equitable proceedings on a simple contract could not become superior to the rights of the transferee.

(2) A transfer of real property is made when it becomes perfected so that a subsequent bona fide purchaser from the cemetery could not obtain rights superior to the rights of the transferee.

(3) A transfer which creates an equitable lien is not perfected if there are available means by which a legal lien could be created.

(4) A transfer not perfected prior to the filing of a petition for liquidation is deemed to be made immediately before the filing of the successful petition.

(5) This subsection applies whether or not there are or were creditors who might have obtained liens or persons who might have become bona fide purchasers.

c. (1) A lien obtainable by legal or equitable proceedings upon a simple contract is one arising in the ordinary course of the proceedings upon the entry or docketing of a judgment or decree, or upon attachment, garnishment, execution, or like process, whether before, upon, or after judgment or decree and whether before or upon levy. It does not include liens which under applicable law are given a special priority over other liens which are prior in time.

(2) A lien obtainable by legal or equitable proceedings could become superior to the rights of a transferee, or a purchaser could obtain rights superior to the rights of a transferee within the meaning of paragraph "b", if such consequences would follow only from the lien or purchase itself, or from the lien or purchase followed by a step wholly within the control of the respective lienholder or purchaser, with or without the aid of ministerial action by public officials. However, a lien could not become superior and a purchase could not create superior rights for the purpose of paragraph "b" through an act subsequent to the obtaining of a lien or subsequent to a purchase which requires the agreement or concurrence of any third party or which requires further judicial action or ruling.

d. A transfer of property for or on account of a new and contemporaneous consideration, which is under paragraph "b" made or suffered after the transfer because of delay in perfecting it, does not become a transfer for or on account of an antecedent debt if any acts required by the applicable law to be performed in order to perfect the transfer as against liens or a bona fide purchaser's rights are performed within twenty-one days or any period expressly allowed by the law, whichever is less. A transfer to secure a future loan, if a loan is actually made, or a transfer which becomes security for a future loan, shall have the same effect as a transfer for or on account of a new and contemporaneous consideration.

e. If a lien voidable under paragraph "a", subparagraph (2) has been dissolved by the furnishing of a bond or other obligation, the surety on which has been indemnified directly or indirectly by the transfer or the creation of a lien upon property of a cemetery before the filing of a petition under this chapter which results in a liquidation order, the indemnifying transfer or lien is also voidable.

f. The property affected by a lien voidable under paragraphs "a" and "e" is discharged from the lien. The property and any of the indemnifying property transferred to or for the benefit of a surety shall pass to the liquidator. However, the court may on due notice order a lien to be preserved for the benefit of the estate and the court may direct that the conveyance be executed to evidence the title of the liquidator.

g. The court shall have summary jurisdiction of a proceeding by the liquidator to hear and determine the rights of the parties under this section. Reasonable notice of hearing in the proceeding shall be given to all parties in interest, including the obligee of a releasing bond or other like obligation. Where an order is entered for the recovery of indemnifying property in kind or for the avoidance of an indemnifying lien, upon application of any party in interest, the court shall in the same proceeding ascertain the value of the property

or lien. If the value is less than the amount for which the property is indemnified or less than the amount of the lien, the transferee or lienholder may elect to retain the property or lien upon payment of its value, as ascertained by the court, to the liquidator within the time as fixed by the court.

h. The liability of a surety under a releasing bond or other like obligation is discharged to the extent of the value of the indemnifying property recovered or the indemnifying lien nullified and avoided by the liquidator. Where the property is retained under paragraph "g", the liability of the surety is discharged to the extent of the amount paid to the liquidator.

i. If a creditor has been preferred for property which becomes a part of the cemetery's estate, and afterward in good faith gives the cemetery further credit without security of any kind, the amount of the new credit remaining unpaid at the time of the petition may be set off against the preference which would otherwise be recoverable from the creditor.

j. If within four months before the filing of a successful petition for liquidation under this chapter, or at any time in contemplation of a proceeding to liquidate, a cemetery, directly or indirectly, pays money or transfers property to an attorney for services rendered or to be rendered, the transaction may be examined by the court on its own motion or shall be examined by the court on petition of the liquidator. The payment or transfer shall be held valid only to the extent of a reasonable amount to be determined by the court. The excess may be recovered by the liquidator for the benefit of the estate. However, where the attorney is in a position of influence in the cemetery or an affiliate, payment of any money or the transfer of any property to the attorney for services rendered or to be rendered is governed by the provision of paragraph "a", subparagraph (2), subparagraph subdivision (d).

k. (1) An officer, manager, employee, shareholder, subscriber, attorney, or any other person acting on behalf of the cemetery who knowingly participates in giving any preference when the person has reasonable cause to believe the cemetery is or is about to become insolvent at the time of the preference is personally liable to the liquidator for the amount of the preference. There is an inference that reasonable cause exists if the transfer was made within four months before the date of filing of this successful petition for liquidation.

(2) A person receiving property from the cemetery or the benefit of the property of the cemetery as a preference voidable under paragraph "a" is personally liable for the property and shall account to the liquidator.

(3) This subsection shall not prejudice any other claim by the liquidator against any person.

#### 10. CLAIMS OF HOLDER OF VOID OR VOIDABLE RIGHTS.

a. A claim of a creditor who has received or acquired a preference, lien, conveyance, transfer, assignment, or encumbrance, voidable under this chapter shall not be allowed unless the creditor surrenders the preference, lien, conveyance, transfer, assignment, or encumbrance. If the avoidance is effected by a proceeding in which a final judgment has been entered, the claim shall not be allowed unless the money is paid or the property is delivered to the liquidator within thirty days from the date of the entering of the final judgment. However, the court having jurisdiction over the liquidation may allow further time if there is an appeal or other continuation of the proceeding.

b. A claim allowable under paragraph "a" by reason of a voluntary or involuntary avoidance, preference, lien, conveyance, transfer, assignment, or encumbrance may be filed as an excused late filing under subsection 12, if filed within thirty days from the date of the avoidance or within the further time allowed by the court under paragraph "a".

#### 11. LIQUIDATOR'S PROPOSAL TO DISTRIBUTE ASSETS.

a. From time to time as assets become available, the liquidator shall make application to the court for approval of a proposal to disburse assets out of marshaled assets.

b. The proposal shall at least include provisions for all of the following:

(1) Reserving amounts for the payment of all the following:

- (a) Expenses of administration.
- (b) To the extent of the value of the security held, the payment of claims of secured creditors.
- (c) Claims falling within the priorities established in subsection 18, paragraphs "a" and "b".
- (2) Disbursement of the assets marshaled to date and subsequent disbursement of assets as they become available.
- c. Action on the application may be taken by the court provided that the liquidator's proposal complies with paragraph "b".

#### 12. FILING OF CLAIMS.

a. Proof of all claims shall be filed with the liquidator in the form required by subsection 13 on or before the last day for filing specified in the notice required under subsection 4.

b. The liquidator may permit a claimant making a late filing to share in distributions, whether past or future, as if the claimant were not late, to the extent that the payment will not prejudice the orderly administration of the liquidation under any of the following circumstances:

- (1) The existence of the claim was not known to the claimant and that the claimant filed the claim as promptly as reasonably possible after learning of it.
- (2) A transfer to a creditor was avoided under subsections 7 through 9, or was voluntarily surrendered under subsection 10, and that the filing satisfies the conditions of subsection 10.
- (3) The valuation under subsection 17 of security held by a secured creditor shows a deficiency, which is filed within thirty days after the valuation.

c. The liquidator may consider any claim filed late and permit the claimant to receive distributions which are subsequently declared on any claims of the same or lower priority if the payment does not prejudice the orderly administration of the liquidation. The late-filing claimant shall receive at each distribution the same percentage of the amount allowed on the claim as is then being paid to claimants of any lower priority. This shall continue until the claim has been paid in full.

#### 13. PROOF OF CLAIM.

a. Proof of claim shall consist of a statement signed by the claimant that includes all of the following that are applicable:

- (1) The particulars of the claim including the consideration given for it.
- (2) The identity and amount of the security on the claim.
- (3) The payments, if any, made on the debt.
- (4) A statement that the sum claimed is justly owing and that there is no setoff, counterclaim, or defense to the claim.
- (5) Any right of priority of payment or other specific right asserted by the claimant.
- (6) A copy of the written instrument which is the foundation of the claim.
- (7) The name and address of the claimant and the attorney who represents the claimant, if any.

b. A claim need not be considered or allowed if it does not contain all the information identified in paragraph "a" which is applicable. The liquidator may require that a prescribed form be used and may require that other information and documents be included.

c. At any time the liquidator may request the claimant to present information or evidence supplementary to that required under paragraph "a" and may take testimony under oath, require production of affidavits or depositions, or otherwise obtain additional information or evidence.

d. A judgment or order against a cemetery entered after the date of filing of a successful petition for liquidation, or a judgment or order against the cemetery entered at any time by default or by collusion need not be considered as evidence of liability or of the amount of damages. A judgment or order against a cemetery before the filing of the petition need not be considered as evidence of liability or of the amount of damages.

#### 14. SPECIAL CLAIMS.

a. A claim may be allowed even if contingent, if it is filed pursuant to subsection 12. The claim may be allowed and the claimant may participate in all distributions declared after it is filed to the extent that it does not prejudice the orderly administration of the liquidation.

b. Claims that are due except for the passage of time shall be treated as absolute claims are treated. However, the claims may be discounted at the legal rate of interest.

c. Claims made under employment contracts by directors, principal officers, or persons in fact performing similar functions or having similar powers are limited to payment for services rendered prior to the issuance of an order of liquidation under subsection 2.

#### 15. DISPUTED CLAIMS.

a. If a claim is denied in whole or in part by the liquidator, written notice of the determination shall be given to the claimant or the claimant's attorney by first class mail at the address shown in the proof of claim. Within sixty days from the mailing of the notice, the claimant may file objections with the liquidator. Unless a filing is made, the claimant shall not further object to the determination.

b. If objections are filed with the liquidator and the liquidator does not alter the denial of the claim as a result of the objections, the liquidator shall ask the court for a hearing as soon as practicable and give notice of the hearing by first class mail to the claimant or the claimant's attorney and to any other persons directly affected. The notice shall be given not less than ten nor more than thirty days before the date of the hearing. The matter shall be heard by the court or by a court-appointed referee. The referee shall submit findings of fact along with a recommendation.

16. CLAIMS OF OTHER PERSON. If a creditor, whose claim against a cemetery is secured in whole or in part by the undertaking of another person, fails to prove and file that claim, then the other person may do so in the creditor's name and shall be subrogated to the rights of the creditor, whether the claim has been filed by the creditor or by the other person in the creditor's name to the extent that the other person discharges the undertaking. However, in the absence of an agreement with the creditor to the contrary, the other person is not entitled to any distribution until the amount paid to the creditor on the undertaking plus the distributions paid on the claim from the cemetery's estate to the creditor equal the amount of the entire claim of the creditor. An excess received by the creditor shall be held by the creditor in trust for the other person.

#### 17. SECURED CREDITOR'S CLAIMS.

a. The value of security held by a secured creditor shall be determined in one of the following ways, as the court may direct:

(1) By converting the security into money according to the terms of the agreement pursuant to which the security was delivered to the creditors.

(2) By agreement, arbitration, compromise, or litigation between the creditor and the liquidator.

b. The determination shall be under the supervision and control of the court with due regard for the recommendation of the liquidator. The amount determined shall be credited upon the secured claim. A deficiency shall be treated as an unsecured claim. If the claimant surrenders the security to the liquidator, the entire claim shall be allowed as if unsecured.

#### 18. PRIORITY OF DISTRIBUTION.

The priority of distribution of claims from the cemetery's estate shall be in accordance with the order in which each class of claims is set forth. Claims in each class shall be paid in full or adequate funds retained for the payment before the members of the next class receive any payment. Subclasses shall not be established within a class. The order of distribution of claims is as follows:

a. CLASS 1. The costs and expenses of administration, including but not limited to the following:

(1) The actual and necessary costs of preserving or recovering the assets of the cemetery.

- (2) Compensation for all authorized services rendered in the liquidation.
- (3) Necessary filing fees.
- (4) The fees and mileage payable to witnesses.
- (5) Authorized reasonable attorney's fees and other professional services rendered in the liquidation.

b. CLASS 2. Reasonable compensation to employees for services performed to the extent that they do not exceed two months of monetary compensation and represent payment for services performed within one year before the filing of the petition for liquidation. Officers and directors are not entitled to the benefit of this priority. The priority is in lieu of other similar priority which may be authorized by law as to wages or compensation of employees.

c. CLASS 3. Claims under interment rights contracts.

d. CLASS 4. Claims of general creditors.

e. CLASS 5. Claims of the federal or any state or local government. Claims, including those of a governmental body for a penalty or forfeiture, are allowed in this class only to the extent of the pecuniary loss sustained from the act, transaction, or proceeding out of which the penalty or forfeiture arose, with reasonable and actual costs incurred. The remainder of such claims shall be postponed to the class of claims under paragraph "g".

f. CLASS 6. Claims filed late or any other claims other than claims under paragraph "g".

g. CLASS 7. The claims of shareholders or other owners.

#### 19. LIQUIDATOR'S RECOMMENDATIONS TO THE COURT.

a. The liquidator shall review claims duly filed in the liquidation and shall make further investigation as necessary. The liquidator may compound, compromise or in any other manner negotiate the amount for which claims will be recommended to the court except where the liquidator is required by law to accept claims as settled by a person or organization. Unresolved disputes shall be determined under subsection 15. As soon as practicable, the liquidator shall present to the court a report of the claims against the cemetery with the liquidator's recommendations. The report shall include the name and address of each claimant and the amount of the claim finally recommended.

b. The court may approve, disapprove, or modify the report on claims by the liquidator. Reports not modified by the court within sixty days following submission by the liquidator shall be treated by the liquidator as allowed claims, subject to later modification or to rulings made by the court pursuant to subsection 15. A claim under a policy of insurance shall not be allowed for an amount in excess of the applicable policy limits.

20. DISTRIBUTION OF ASSETS. Under the direction of the court, the liquidator shall pay distributions in a manner that will assure the proper recognition of priorities and a reasonable balance between the expeditious completion of the liquidation and the protection of unliquidated and undetermined claims, including third-party claims. Distribution of assets in kind may be made at valuations set by agreement between the liquidator and the creditor and approved by the court.

#### 21. UNCLAIMED AND WITHHELD FUNDS.

a. Unclaimed funds subject to distribution remaining in the liquidator's hands when the liquidator is ready to apply to the court for discharge, including the amount distributable to a creditor, owner, or other person who is unknown or cannot be found, shall be deposited with the treasurer of state, and shall be paid without interest, except as provided in subsection 18, to the person entitled or the person's legal representative upon proof satisfactory to the treasurer of state of the right to the funds. An amount on deposit not claimed within six years from the discharge of the liquidator is deemed to have been abandoned and shall become the property of the state without formal escheat proceedings and be transferred to the insurance division regulatory fund.

b. Funds withheld under subsection 14 and not distributed shall upon discharge of the liquidator be deposited with the treasurer of state and paid pursuant to subsection 18.

Sums remaining which under subsection 18 would revert to the undistributed assets of the cemetery shall be transferred to the insurance division regulatory fund and become the property of the state as provided under paragraph "a", unless the commissioner in the commissioner's discretion petitions the court to reopen the liquidation pursuant to subsection 23.

c. Notwithstanding any other provision of this chapter, funds as identified in paragraph "a", with the approval of the court, shall be made available to the commissioner for use in the detection and prevention of future insolvencies. The commissioner shall hold these funds in the insurance division regulatory fund and shall pay without interest, except as provided in subsection 18, to the person entitled to the funds or the person's legal representative upon proof satisfactory to the commissioner of the person's right to the funds. The funds shall be held by the commissioner for a period of two years at which time the rights and duties to the unclaimed funds shall vest in the commissioner.

#### 22. TERMINATION OF PROCEEDINGS.

a. When all assets justifying the expense of collection and distribution have been collected and distributed under this chapter, the liquidator shall apply to the court for discharge. The court may grant the discharge and make any other orders, including an order to transfer remaining funds that are uneconomical to distribute, as appropriate.

b. Any other person may apply to the court at any time for an order under paragraph "a". If the application is denied, the applicant shall pay the costs and expenses of the liquidator in resisting the application, including a reasonable attorney's fee.

23. REOPENING LIQUIDATION. At any time after the liquidation proceeding has been terminated and the liquidator discharged, the commissioner or other interested party may petition the court to reopen the proceedings for good cause including the discovery of additional assets. The court shall order the proceeding reopened if it is satisfied that there is justification for the reopening.

24. DISPOSITION OF RECORDS DURING AND AFTER TERMINATION OF LIQUIDATION. If it appears to the commissioner that the records of a cemetery in process of liquidation or completely liquidated are no longer useful, the commissioner may recommend to the court and the court shall direct what records shall be retained for future reference and what records shall be destroyed.

25. EXTERNAL AUDIT OF RECEIVER'S BOOKS. The court may order audits to be made of the books of the commissioner relating to a receivership established under this chapter, and a report of each audit shall be filed with the commissioner and with the court. The books, records, and other documents of the receivership shall be made available to the auditor at any time without notice. The expense of an audit shall be considered a cost of administration of the receivership.

#### Sec. 27. NEW SECTION. 523J.6 POWERS AND DUTIES OF PERPETUAL CARE CEMETERIES.

1. Within the boundaries of the cemetery lands that the cemetery owns, a cemetery may perform the following functions:

a. The exclusive care and maintenance of the cemetery.

b. The exclusive interment, entombment, or inurnment of human remains, including the exclusive right to open, prepare for interment, and close all ground, mausoleum, and urn burials. Each preneed contract for burial rights or services shall disclose, pursuant to the cemetery's bylaws, rules, and regulations, whether opening and closing of the burial space is included in the contract, and, if not, the current prices for opening and closing and a statement that these prices are subject to change. Each cemetery which sells preneed contracts must offer opening and closing as part of a preneed contract.

c. The exclusive initial preneed and at-need sale of interment or burial rights in earth, mausoleum, crypt, niche, or columbarium interment. However, this chapter does not limit the right of a person owning interment or burial rights to sell those rights to third parties subject to transfer of title by the cemetery.

d. The adoption of bylaws regulating the activities conducted within the cemetery's boundaries, provided that a licensed funeral director shall not be denied access by any cemetery to conduct a funeral for or supervise a disinterment of human remains. The cemetery shall not approve any bylaw which unreasonably restricts competition, or which unreasonably increases the cost to the owner of interment or burial rights in utilizing these rights.

e. The nonexclusive preneed and at-need sale of monuments, memorials, markers, burial vaults, urns, flower vases, floral arrangements, and other similar merchandise for use within the cemetery.

f. The entry into sales or management contracts with other persons. The cemetery shall be responsible for the deposit of all moneys required to be placed in a trust fund.

2. A full disclosure shall be made of all fees required for interment, entombment, or inurnment of human remains.

3. A cemetery may adopt bylaws establishing minimum standards for burial merchandise or the installation of such merchandise.

Sec. 28. NEW SECTION. 523J.7 INVESTIGATIONS.

The commissioner or the attorney general, for the purpose of discovering violations of this chapter, may do any of the following:

1. Investigate the cemetery and examine records as necessary to verify compliance with this chapter.

2. Administer oaths and affirmations, subpoena witnesses, receive evidence, and require the production of documents and records in connection with an investigation or proceeding being conducted pursuant to this chapter.

3. Apply to the district court for issuance of an order requiring a person's appearance before the commissioner or attorney general, or a designee of either or both, in cases where the person has refused to obey a subpoena issued by the commissioner or attorney general. The person may also be required to produce documentary evidence germane to the subject of the investigation. Failure to obey a court order under this subsection constitutes contempt of court.

Sec. 29. Section 566A.1, subsection 1, Code 1995, is amended to read as follows:

1. A corporation or other form of organization engaging in the business of the ownership, maintenance, or operation of a cemetery, which provides lots or other interment space for the remains of human bodies is subject to this chapter. However, a ~~church, religious organization, or established fraternal society~~ cemetery is subject only to subsection 2 ~~of this section, and sections 566A.2A and 566A.2B.~~ A cemetery with average retail sales equal to or less than five thousand dollars for the previous three calendar years is exempt from section 566A.2D. Political subdivisions of the state which are counties are exempt from this chapter. Political subdivisions of the state other than counties are subject only to sections 566A.1A, 566A.2A, 566A.2B, and 566A.2E.

Sec. 30. NEW SECTION. 566A.1A DEFINITIONS.

As used in this chapter, unless the context otherwise requires:

1. "Agent" means a person authorized by a cemetery or a cemetery operator to represent the cemetery in dealing with the public.

2. "Cemetery" means a cemetery, mausoleum, columbarium, or other space held for the purpose of burial, entombment, or inurnment of human remains and where such space is offered for sale to the public.

3. "Cemetery operator" means a person who owns, controls, operates, or manages a cemetery, who is responsible for the cemetery's care and maintenance, and who controls the opening and closing of all graves, crypts, and niches.

4. "Columbarium" means a structure or room or other space in a building or structure used or intended to be used for the inurnment or deposit of cremated human remains.

5. "Commissioner" means the commissioner of insurance or the deputy appointed under section 502.601.

6. "Deed" means the assignment or conveyance of interment rights.
7. "Grave" means a piece of land that is used or intended to be used for the underground burial of human remains, other than an underground mausoleum or columbarium space.
8. "Human remains" means the body of a deceased individual that is in any stage of decomposition or has been cremated.
9. "Interment" means the disposition of human remains by earth burial, entombment, or inurnment.
10. "Interment rights" means a right of use conveyed by contract or property ownership to inter human remains in a columbarium, grave, mausoleum, lawn crypt, or undeveloped space.
11. "Lawn crypt" means an outer enclosure, for a casket or similar inner burial container which is permanently installed below ground prior to the time of actual interment. A lawn crypt may permit single or multiple interments in a grave space.
12. "Mausoleum" means a building, structure, or part of a building or structure that is used or intended to be used for the entombment of human remains.
13. "Mausoleum space" means a niche, crypt, or specific place in a mausoleum that contains or is intended to contain human remains.
14. "Niche" means a recess in the wall of a mausoleum or columbarium for the deposit of human remains.
15. "Perpetual care" means maintenance, repair, and care of all interment spaces, features, buildings, roadways, parking lots, water supply, and other existing cemetery structures subject to the provisions of section 566A.3 and includes the general overhead expenses needed to accomplish such maintenance, repair, and care.
16. "Perpetual care cemetery" means a cemetery which has established a perpetual care fund for the maintenance, repair, and care of all interment spaces subject to perpetual care within the cemetery in compliance with section 566A.3.
17. "Religious cemetery" means a cemetery that is owned, operated, or controlled by a recognized church, religious society, association, or denomination.
18. "Sale" means a transfer for consideration of any interest in ownership, title, or right of use.
19. "Undeveloped space" means a mausoleum, columbarium space, or lawn crypt that is not ready for the burial of human remains on the date of the sale of the space.

Sec. 31. NEW SECTION. 566A.2A PERPETUAL CARE CEMETERY REGISTRY.

A perpetual care cemetery shall maintain a registry of individuals who have purchased items subject to the perpetual care requirements of this chapter including the amount deposited in trust for each individual. The registry shall include all transactions entered into on or after July 1, 1995.

Sec. 32. NEW SECTION. 566A.2B INTERMENT RIGHTS AGREEMENT - REQUIREMENTS - CONTENTS.

1. An agreement for interment rights under this chapter must be written in clear, understandable language and do all of the following:
  - a. Identify the seller and purchaser.
  - b. Identify the salesperson.
  - c. Specify the interment rights to be provided and the cost of each item.
  - d. State clearly the conditions on which substitution will be allowed.
  - e. Set forth the total purchase price and the terms under which it is to be paid.
  - f. State clearly whether the agreement is a revocable or irrevocable contract, and, if revocable, which parties have the authority to revoke the agreement.
  - g. State the amount or percentage of money to be placed in the cemetery's perpetual care and maintenance guarantee fund.
  - h. Set forth an explanation that the perpetual care and maintenance guarantee fund is an irrevocable trust, that deposits cannot be withdrawn even in the event of cancellation,

and that the trust's income shall be used by the cemetery for its maintenance, repair, and care.

- i. Set forth an explanation of any fees or expenses that may be charged.
- j. Set forth an explanation of whether amounts for perpetual care will be deposited in trust upon payment in full or on an allocable basis as payments are made.
- k. Set forth an explanation of whether initial payments on agreements for multiple items of funeral and cemetery merchandise or services, or both, will be allocated first to the purchase of a grave, niche, columbarium space, or mausoleum space. If such an allocation is to be made, the agreement shall provide for the immediate transfer of such interment rights upon payment in full and prominently state that any applicable trust deposits under chapters 523A and 523E will not be made until the cemetery has received payment in full for the interment rights. The transfer of an undeveloped space may be deferred until such space is ready for burial.
  - 1. If the transfer of an undeveloped space will be deferred until the space is ready for burial as permitted in paragraph "l",\* the agreement shall provide for some form of written acknowledgment upon payment in full, specify a reasonable time period for development of the space, describe what happens in the event of a death prior to development of the space, and provide for the immediate transfer of the interment rights when development of the space is complete.
  - m. Specify the purchaser's right to cancel and the damages payable for cancellation, if any.
  - n. State the name and address of the commissioner.

**Sec. 33. NEW SECTION. 566A.2D ANNUAL REPORT BY NONPERPETUAL CARE CEMETERIES.**

- 1. A nonperpetual care cemetery shall file a written report with the insurance division within four months following the end of the cemetery's fiscal year. The report shall include all of the following:
  - a. The name and address of the cemetery.
  - b. An affidavit that the cemetery is a nonperpetual care cemetery in compliance with section 566A.5.
  - c. Copies of all sales agreement forms used by the cemetery.
- 2. The commissioner shall permit the filing of a unified annual report in the event of commonly owned or affiliated cemeteries. A political subdivision subject to this section may commingle perpetual care funds for purposes of investment and administration and may file a single report, if each cemetery is appropriately identified and separate records are maintained for each cemetery.
- 3. The report shall be made under oath.
- 4. Notwithstanding chapter 22, all records maintained by the commissioner under this section are confidential and shall not be made available for inspection or copying except upon the approval of the commissioner or attorney general.

**Sec. 34. NEW SECTION. 566A.2E ANNUAL REPORT BY PERPETUAL CARE CEMETERIES.**

- 1. A perpetual care cemetery shall file a written report as of the end of each fiscal year of the cemetery including the following:
  - a. The name and address of the cemetery.
  - b. The name and address of any trustee holding perpetual care and maintenance guarantee fund moneys.
  - c. The name and address of any depository holding perpetual care and maintenance guarantee fund moneys.
  - d. An affidavit that the cemetery is a perpetual care cemetery in compliance with section 566A.3.
  - e. Copies of all sales agreement forms used by the cemetery.
  - f. The amount of the principal of the cemetery's perpetual care funds at the end of the fiscal year.

\*Paragraph "k" probably intended

g. The number of interments made and the number of deeds issued during the cemetery's preceding fiscal year.

2. The report shall be filed with the insurance division within four months following the end of the cemetery's fiscal year in the form required by the commissioner.

3. The commissioner shall permit the filing of a unified annual report in the event of commonly owned or affiliated cemeteries. A political subdivision subject to this section may commingle perpetual care funds for purposes of investment and administration and may file a single report, if each cemetery is appropriately identified and separate records are maintained for each cemetery.

4. The commissioner shall establish by rule an audit fee to be filed with the annual report. The audit report fee shall be based on the number of deeds issued by the cemetery during the reporting period. The audit fee shall apply only to perpetual care cemeteries and shall be based on the approximate cost of regulation.

5. Notwithstanding chapter 22, all records maintained by the commissioner under this subsection are confidential and shall not be made available for inspection or copying except upon approval of the commissioner or attorney general.

Sec. 35. Section 566A.3, Code 1995, is amended by adding the following new unnumbered paragraph:

**NEW UNNUMBERED PARAGRAPH.** A perpetual care cemetery may require a contribution to the cemetery's perpetual care guarantee fund for each grave marker, tombstone, monument, or item of ornamental merchandise installed in the cemetery from the purchaser of such merchandise. A cemetery may establish a separate perpetual care fund for this purpose. The contribution, if required by the cemetery, shall be uniformly charged on every installation and shall be set aside and deposited in the perpetual care trust fund. The contributions shall be nonrefundable and shall not be withdrawn from the trust fund once deposited.

Sec. 36. Section 566A.5, Code 1995, is amended by striking the section and inserting in lieu thereof the following:

**566A.5 NONPERPETUAL CARE CEMETERIES.**

1. Each nonperpetual care cemetery shall post a legible sign in a conspicuous place in the office or offices where sales are conducted, and at or near the entrance of the cemetery or its administration building and readily accessible to the public stating: "This is a nonperpetual care cemetery". The lettering of these signs shall be of a size and style as approved by the commissioner by rule or order so that the signs can be read at a reasonable distance.

2. Each nonperpetual care cemetery shall also have printed or stamped at the head of all of its contracts, deeds, statements, letterheads, and advertising material, the legend: "This is a nonperpetual care cemetery", and shall not sell any lot or interment space in the cemetery unless the purchaser of the lot or interment space is informed that the cemetery is a nonperpetual care cemetery.

3. A nonperpetual care cemetery or cemetery operator or employee or agent of a nonperpetual care cemetery shall not advertise or represent that the cemetery is a perpetual care cemetery or use any similar title, description, or term indicating that the cemetery provides guaranteed or permanent maintenance and care or that the cemetery has a trust fund or endowment fund to pay for the expenses of such care.

Sec. 37. Section 566A.12, Code 1995, is amended by striking the section and inserting in lieu thereof the following:

**566A.12 ANNUAL REPORTS AND ADMINISTRATION.**

1. **CEMETERY REGISTRY.** The commissioner shall establish and maintain a public registry of perpetual care cemeteries.

2. **INVESTIGATIONS AND AUDITS.** The commissioner or the attorney general, for the purpose of discovering violations of this chapter or rules adopted pursuant to this chapter, may do any of the following:

a. Audit any cemetery, for cause or on a random basis, to determine compliance with this chapter. A cemetery shall make available to the commissioner or attorney general the cemetery's deed registry and those books, accounts, records, and files related to the sale of interment rights. Notwithstanding chapter 22, all business records and files acquired by the commissioner or attorney general pursuant to an audit under this subsection are confidential and shall not be made available for inspection or copying unless ordered by a court for good cause shown. If it is determined pursuant to an audit that a material violation of this chapter or rules adopted pursuant to this chapter has occurred, the cost of the audit may be assessed to the cemetery.

b. Administer oaths and affirmations, subpoena witnesses, receive evidence, and require the production of documents and records in connection with an investigation or proceeding being conducted pursuant to this chapter.

c. Apply to the district court for issuance of an order requiring a person's appearance before the commissioner or attorney general, or a designee of either or both, where the person has refused to obey a subpoena issued by the commissioner or attorney general. The person may also be required to produce documentary evidence germane to the subject of the investigation. Failure to obey a court order under this subsection constitutes contempt of court.

3. CEASE AND DESIST ORDERS. If an audit or investigation provides reasonable evidence that a person has violated this chapter, or any rule adopted pursuant to this chapter, the commissioner may issue an order directed at the person to cease and desist from engaging in such act or practice.

#### 4. RECEIVERSHIPS.

a. The commissioner shall notify the attorney general if the commissioner finds that a perpetual care cemetery subject to regulation under this chapter meets one or more of the following grounds for the establishment of a receivership:

(1) Is insolvent.

(2) Has utilized trust funds for personal or business purposes in a manner inconsistent with the requirements of this chapter, and the amount of funds currently held in the trust is less than the amount required by this chapter.

b. The attorney general may apply to the district court in any county of the state for a receivership. Upon proof of any of the grounds for a receivership described in this section the court may grant a receivership.

5. INJUNCTIONS. The attorney general may apply to the district court for an injunction to restrain any cemetery subject to this chapter and any agents, employees, trustees, or associates of the cemetery from engaging in conduct or practices deemed a violation of this chapter or rules adopted pursuant to this chapter. Upon proof of any violation of this chapter described in the petition for injunction, the court may grant the injunction. Failure to obey a court order under this subsection constitutes contempt of court.

Sec. 38. Section 566A.13, Code 1995, is amended to read as follows:

#### 566A.13 VIOLATIONS AND PENALTIES.

A violation of this chapter or rules adopted by the ~~attorney general~~ commissioner pursuant to this chapter is a violation of section 714.16, subsection 2, paragraph "a". The remedies and penalties provided by section 714.16, including but not limited to, provisions relating to injunctive relief and penalties, apply to a violation of this chapter.

Sec. 39. NEW SECTION. 566A.14 RULES.

The division of insurance may adopt rules pursuant to chapter 17A as necessary and appropriate to administer this chapter.

Sec. 40. NEW SECTION. 566A.15 CEMETERY FUND.

A special revenue fund is created in the state treasury, under the control of the commissioner, to be known as the insurance division cemetery fund. Commencing July 1, 1995,

filing fees received pursuant to section 566A.2D and one dollar from the audit fee for each deed reported on the annual report required by section 566A.2E, executed during the preceding fiscal year, shall be deposited in the insurance division cemetery fund by the commissioner. However, if the balance of the fund on July 1 of any year exceeds two hundred thousand dollars, the allocation to the fund shall not be made, and the total sum of the fees paid pursuant to section 566A.2E shall be deposited in the general fund of the state. Notwithstanding section 8.33, moneys in the fund shall not revert to the general fund but shall remain in the cemetery fund. Moneys in the cemetery fund are appropriated to the insurance division and, subject to authorization by the commissioner, may be used to pay the expenses of that office incurred in the administration of the audit, investigative, and enforcement duties and obligations imposed under this chapter, and the expenses of receiverships established pursuant to section 566A.12.

Sec. 41. **CONDITION TO ENACTMENT OF CERTAIN PROVISIONS.** The section of this Act which amends Code section 566A.12 shall only be implemented if the general assembly makes an appropriation of at least fifty thousand dollars and provides for the employment of one full-time employee devoted to the insurance division for the implementation of this Act.

Approved May 3, 1995

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## CHAPTER 150

### SALES, SERVICES, AND USE TAX EXEMPTION - STATEWIDE NOTIFICATION CENTER

*H.F. 550*

**AN ACT** relating to the exemption of the statewide notification center and its vendors from sales, services, and use taxes and providing for the Act's effectiveness and retroactive applicability.

*Be It Enacted by the General Assembly of the State of Iowa:*

Section 1. Section 422.45, Code 1995, is amended by adding the following new subsection:

**NEW SUBSECTION.** 49. The gross receipts from services rendered, furnished, or performed, by the notification center established pursuant to section 480.3, and the vendor selected pursuant to section 480.3 to provide the notification service.

Sec. 2. **EFFECTIVE DATE AND APPLICABILITY.** This Act, being deemed of immediate importance, takes effect upon enactment and applies retroactively to tax years beginning on or after January 1, 1995.

Approved May 3, 1995